Calendar No. 695

100TH CONGRESS *2d Session*	SENATE	REPORT 100-362

CASH MANAGEMENT IMPROVEMENT ACT OF 1988

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1381

TO IMPROVE CASH MANAGEMENT BY EXECUTIVE AGENCIES, AND FOR OTHER PURPOSES

TOGETHER WITH

ADDITIONAL VIEWS

MAY 26 (legislative day, MAY 18), 1988.—Ordered to be printed

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CASH MANAGEMENT IMPROVEMENT ACT OF 1988

MAY 26 (legislative day, MAY 18), 1988.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1381]

The Committee on Governmental Affairs, to which was referred the bill (S. 1381) to improve cash management by executive agencies, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. PURPOSE AND SUMMARY

In order to maximize the efficiency of Federal cash transactions with the States, S. 1381 establishes several procedures and incentives. Their purpose is to minimize the time between the availability and outlay of Federal funds for programs administered by the States.

The short title and purpose are set out in Sections 1 and 2. Section 3 amends Subchapter II of chapter 37 of title 31, United States Code, by adding section 3720B, "Disbursement of Federal Funds." This new section complements existing section 3720 of that title, which empowers the Secretary of the Treasury to enforce timely collection of payments by Federal executive agencies; section 3720B authorizes the Secretary to promulgate regulations providing for the timely disbursement of funds by Federal executive agencies. The Secretary is further authorized under this section to assess against a noncomplying agency a penalty equal to the "cost" of

such noncompliance, e.g., costs such as those associated with the payment of interest under section 4 of S. 1381.

Section 4 seeks to resolve longstanding differences between the Federal and State governments regarding cash management practices involving the financing of Federal assistance programs. Each side in the debate had occasion to charge that its funds were being used by the other for unduly lengthy periods of time—either because States drew down Federal funds too far in advance of when they were needed to cover expenditures, or because Federal agencies were slow in reimbursing funds advanced by States for Federal program purposes. Section 4 amends the Intergovernmental Cooperation Act (section 6503(a) of title 31, United States Code). Consistent with the Memoranda of Understanding agreed to in June 1983 and November 1985 by the Joint Federal/State Cash Management Reform Task Force, the amended section 6503(a) establishes (1) a set of government-wide cash management policies and practices to govern the exchange of funds between the Federal and State governments and (2) intergovernmental cash management practices which assure that neither the Federal nor a State government either benefits or suffers financially as a result of a cash transfer under a Federal program. The chief mechanism for accomplishing this end is the calculation and exchange (or setoff) of interest between the Federal government and each State government; such interest will be calculated for the periods when Federal funds are drawn down pending expenditure, or when State funds are advanced pending reimbursement.

Finally, section 5 of S. 1381 requires the Secretary of the Treasury to study and report on the feasibility of establishing a national lockbox system for agencies on a government-wide basis, to improve the collection and deposit of Federal funds.

II. BACKGROUND AND NEED FOR LEGISLATION

1. The Problem—Premature Drawdown of Federal Funds by States, and Delays in Federal Reimbursement of State Advances

The amount of funds transferred to state and local governments, to carry out Federal program purposes, presently amounts to about $110 billion annually allocated among 435 separate Federal aid programs. Historically, the procedures followed for drawing down Federal money to redeem or to disburse State checks or warrants have tended to vary between different programs, and between the respective departments or agencies, at the State and Federal levels, charged with administering the programs.

This lack of uniformity helped to exacerbate longstanding differences between Federal and State Governments over cash management practices, in financing Federal assistance programs. While on the one hand, Federal officials alleged accurately that some administering departments at the State level were drawing down Federal funds too far in advance of need, costing the Federal Government foregone interest, the States on the other hand could point with justification to examples of Federal delays in reimbursing States

when they advance their funds for Federal projects, such as highway construction.

The need for cooperation, rather than competition, between Federal and State Governments in achieving more efficient cash management was brought into focus in 1982, when the Department of Health and Human Services announced plans to implement a new cash management procedure called delay of drawdown/letter of credit. This calls for the establishment of historical check clearance patterns for Medicaid and AFDC payments, and disbursement of Federal funds to States on the basis of these patterns, rather than permitting drawdown of funds when checks or warrants are issued as is the current practice.

This created difficulties for over one half of the States, which have statutory or constitutional prohibitions against issuing checks or warrants without sufficient Federal funds in the State treasury for that purpose. Because of the impasse on this issue between the States and HHS, several Senators urged that the delay of drawdown program be rescinded while the Federal and State Governments worked to reach an accord on how to proceed toward more equitable cash management principles.

2. Formulation and Testing of Reciprocal Interest Payment Provisions by the Joint Federal/State Task Force

In order to facilitate an equitable and mutually agreeable solution to the problem of timely disbursement of Federal funds, a Joint Federal/State Cash Management Reform Task Force was created in 1983 at the request of the Chairman of the Governmental Affairs Subcommittee on Intergovernmental Relations, Senator Durenberger. The Task Force consisted of six State fiscal officials and six Federal officials, including representatives from OMB and the Departments of Treasury and Health and Human Services. In June 1983, the Task Force signed a Memorandum of Understanding which has governed all subsequent discussions, negotiations and agreements of the group. In addition, the Task Force agreed that no State would be required to adopt the delay of drawdown method unless it requested to do so. The seventeen intergovernmental cash management policies for financing Federal assistance programs, adopted by the Task Force, are included in the Appendix to this Report as part of the June 1983 Memorandum of Understanding.

Following the policies established by that Memorandum, four States—Virginia, Indiana, Wisconsin and California—in conjunction with the Department of Treasury and other Federal agencies, conducted pilot programs to test several new cash management procedures. The pilot included the calculation of interest that would be exchanged between the Federal and State Governments for late reimbursement of funds advanced by the State for Federal program purposes and for early drawdown of Federal funds, respectively. Although interest was calculated, no interest was exchanged. These pilots were concluded successfully with regard to the cash management procedures; however, during the pilots, the States identified a number of issues that needed to be resolved in order to ensure equitable treatment for the States.

Until the signing of the November 1, 1985 Memorandum of Understanding, the Task Force sought to address the equity issues identified by the States and to incorporate solutions into proposed legislation as well as proposed amendments to Treasury regulations and OMB circulars concerning cash management procedures. The November 1985 Memorandum of Understanding, which is included in the Appendix to this Report, encompasses the basic agreements of the Task Force with which the Committee agrees. The Memorandum attached draft legislation, to amend sections 6501 and 6503 of title 31, which appears in substantially unchanged form as subsection (b)(1) of section 4 of S. 1381. The Committee understands that no interest will be exchanged under the provisions of the Treasury regulations or the OMB circulars until appropriate amendments to the Intergovernmental Cooperation Act have been signed into law.

3. Legislative Action in the 99th Congress—S. 2230

During the Second Session of the 99th Congress, the Governmental Affairs Committee considered similar legislation, S. 2230, the "Federal Management Reorganization and Cost Control Act of 1986." S. 2230 was introduced by Senator William V. Roth, Jr. on March 26, 1986. Title IV of S. 2230 included the three substantive provisions of S. 1381: (1) authorizing promulgation of "disbursement objectives" by the Department of the Treasury; (2) the language formulated by the Federal/State Task Force, providing for "payment of interest" between the State and Federal Governments on Federal funds transfers; and (3) authorization for the study of improvements in the use of national lockbox systems for collection and deposit of government receipts. (Certain other provisions of Title IV, not pertinent to the legislation, S. 1381, being considered here, were deleted through amendment during Full Committee markup of S. 2230.)

On May 13 and 14, 1986, the Committee on Governmental Affairs held two days of hearings on S. 2230. Markup of the bill took place on June 25, 1986, on which date the Committee agreed to report S. 2230 favorably, as amended, to the Senate by a unanimous vote of 7 to 0. Though numerous amendments to the bill had been considered and adopted in markup, none of them affected the three provisions of Title IV which are presently embodied, in much the same form, in S. 1381. However, the full Senate was unable to act on the provisions of Title IV of S. 2230 prior to the adjournment of Congress.

III. HISTORY OF S. 1381

On June 17, 1987 Senator Roth and Senator Jim Sasser introduced S. 1381, to bring the three legislative proposals, contained in Title IV of S. 2230 as reported, once more to Congress' attention for consideration. The bill was assigned to the Committee on Governmental Affairs Subcommittee on Government Efficiency, Federalism, and the District of Columbia.

The Subcommittee held a hearing on S. 1381 on July 22, 1987. Testimony was received from the following witnesses: Gerald Murphy, Fiscal Assistant Secretary, U.S. Department of the Treas-

ury, accompanied by Dr. Russell D. Morris, Assistant Commissioner for Federal Finance, Financial Management Service and Co-Chairman of the Federal/State Task Force; Jeffrey C. Steinhoff, Associate Director, Accounting and Financial Management Division, GAO, accompanied by Chris Martin, Senior Accountant; and a panel of State fiscal officials including Frank L. Greathouse, Director, Division of State Audit, State of Tennessee; Edward J. Mazur, Comptroller, Commonwealth of Virginia and Co-Chairman of the Federal/State Task Force; F. Arnold Schuler, deputy controller, State of California; and Beverly Balakhovsky, chief accountant, State of Wisconsin.

All of the witnesses testifying expressed enthusiastic support for the cash management principles worked out by the Federal/State Task Force and reflected in S. 1381. Mr. Steinhoff of the General Accounting Office expressed the GAO's support, and emphasized the importance of "equity" considerations embodied in the bill—that equal treatment and procedures should govern its implementation by both the Federal and the State Governments. Referring specifically to Section 4 of S. 1381, which contains the reciprocal interest exchange provisions, Mr. Steinhoff characterized it as the result of "[four] years of excellent work by the [Federal/State] Task Force," which "addresses a long-standing cash management problem in federal programs administered by the states—ensuring that neither party incurs unnecessary interest costs."

Mr. Murphy, from the Department of the Treasury, vouched the support of both his Department and the Office of Management and Budget for the legislation developed by the Federal/State Task Force. He drew the subcommittee's attention, however, to two aspects of Section 4 which were of concern to OMB. One was the provision in subsection 4(b)(1)(d), which specifies that the States would be entitled to interest from the Federal Government when the States advance their own funds for Federal programs, pending reimbursement from the Federal Government. Mr. Murphy expressed the view of OMB that States should not be entitled to interest "whether or not a Federal agency is at fault," but only if the State advanced its own funds "at a time and for which the Federal Government is obligated to pay but has not provided funds." Secondly, the provision in subsection 4(b)(1)(1), in Mr. Murphy's words, "implies that the [Federal] Government will pay States for additional administrative costs for interest transactions." Mr. Murphy offered the view that such costs "should be treated as a general overhead cost of Government like any other administrative cost," i.e., borne by the respective parties.

However, the State fiscal officials testifying at the hearing, in response to Mr. Murphy's testimony, noted that the concerns he was raising had been considered extensively by the Federal/State Task Force, on which OMB and the Treasury were represented. Thus, the question whether liability for interest should be predicated on "fault" had been resolved by the Task Force. In the words of Mr. Mazur, Virginia Comptroller and State Co-Chairman of the Task Force, it was determined that "interest owed to the Federal Government or to the States will be calculated based solely on who used the funds, not based on fault," and that this principle must be adhered to by Federal agencies as much as by their State counter-

parts, if the equity principles of the bill were to be observed. As to the issue of which party should bear State administrative costs of the program, Mr. Mazur deemed it "critical that the Secretary of the Treasury be granted the authority to consider costs incurred by the States when calculating interest due." Mr. Schuler of California, another member of the Task Force, noted that the question of administrative costs had been discussed since 1983 and that the States which pilot-tested the interest exchange program knew they would incur "additional cost" and participated with the explicit understanding that they "could receive some help from the Federal Government in that area."

This was why the State witnesses were supportive of S. 1381 as introduced: It reflects their understanding that Federal and State actors would be treated equitably, i.e., that States would be made whole, for using their own money for Federal programs, without having to establish Federal agency "fault"; and, that additional State administrative costs of the interest exchange program would be borne by the Federal government. Indeed, these witnesses emphasized that States support the legislation despite the fact that on balance, the Federal government is likely to receive more in interest than it pays out.

The reason for this is that the resolution of disputes between States and the Federal government over funding mechanisms, and the greater certainty of availability of Federal funds which would result from S. 1381, will enhance the investment strategies of financially astute State governments. As expressed by Mr. Greathouse:

> Tennessee is very innovative in how it invests its idle funds. Anything that we can do that helps us further forecast monies that are going to be available for investment earns us more money. We have gotten very sophisticated, as have most States, in how we manage our idle funds.
>
> This is a yield to the taxpayer, again, not looking at the [interest] cost. * * * The cost is whatever is related to that portion of the funds lying there that represents Federal funds. The whole idea of this, I think, is that this type of legislation would help us better forecast by the leveling of the flow of moneys back and forth.
>
> Therefore, it is a benefit to the taxpayer, all taxpayers. And then if there is a distribution back to the Federal Government, so be it. * * * That is the attitude that we are taking in the State on it.

In other words, the accumulation of interest by either Federal or State Governments is not an end in itself; its calculation and exchange is a means to the end. As Mr. Mazur, the Joint Task Force Co-Chairman, reiterated, "the cornerstone of this legislation is not the interest, but it is the provision of an effective funds transfer mechanism. There is a sense of discipline, from a policy point of view, that is embodied in this legislation that says to both State people and to Federal people, transact your business in the shortest amount of time."

Moreover, both the National Association of State Auditors, Comptrollers and Treasurers (NASACT), and the National Associa-

tion of State Budget Officers (NASBO), are on record as supporting S. 1381.

In addition, the subcommittee on July 15, 1987 had written to solicit comments on S. 1381 from the Honorable James C. Miller, Director, Office of Management and Budget; the Honorable Charles A. Bowsher, Comptroller General of the United States; the Honorable James A. Baker III, Secretary of the Treasury; the Honorable Elizabeth Hanford Dole, Secretary of Transportation; and Mr. John Shannon, Executive Director, Advisory Council on Intergovernmental Relations (ACIR). Of these, the GAO responded on July 27, 1987 on behalf of General Bowsher, to note that its position had been expressed by Mr. Steinhoff at the subcommittee hearing; and the ACIR, by letter dated July 31, 1987, stated that it had not studied the subject matter of S. 1381 sufficiently to offer comment on the bill.

Due to some peripheral concerns expressed by State officials, and suggestions for language changes from officials at OMB and Treasury, the Subcommittee staff continued to work with Task Force members and other Government officials following the July 22 hearing and made a number of changes in the wording of S. 1381.

These changes were included in section 5002 of S. 1920, the Senate-reported version of the "Omnibus Budget Reconciliation Act of 1987." Section 5002 was a substitute for S. 1381 in the form of an amendment, offered by Senator Sasser for himself and Senator Roth. Preparatory to consideration by the Full Committee of section 5002, the Subcommittee on Government Efficiency, Federalism, and the District of Columbia, on October 16, 1987, by a unanimous vote of 5 to 0, polled out S. 1381 with those amendments reflected which were simultaneously being included in section 5002 of the reconciliation measure.

Accordingly, the Full Committee included section 5002 in its reconciliation instructions to the Senate Budget Committee, and that section was included in S. 1920 as passed by the Senate and referred to conference between the Senate Governmental Affairs Committee and the House Committee on Government Operations. However, Section 5002 was dropped from the reconciliation measure in conference.

IV. COMMITTEE VOTE

The Committee on Governmental Affairs held a markup on S. 1381 on April 14, 1988. At the markup, an amendment in the nature of a substitute was offered by Senator Sasser for himself and Senator Roth. This substitute embodied both the changes to the original bill, included in the budget reconciliation version, and others included subsequently by staff of the Subcommittee on Government Efficiency, Federalism and the District of Columbia as a result of discussions with State and Federal officials. Those changes are summarized briefly as follows:

Section 3(a), "Disbursement Objectives," was amended to specify that "to the maximum extent practicable," any "backcharges" against a Federal agency by the Secretary of the Treasury, for the cost of untimely disbursements, should come from agency operating budgets, not program funds intended for the States. Otherwise,

States relying on the program would bear the ultimate burden for Federal agency non-compliance. The Secretary is afforded some flexibility by the qualification, "to the maximum extent practicable," because certain agency appropriations (for example, the Highway Trust Fund) are not broken down into "operating" versus "program" budgets.

Subsection 4(b)(1)(c)(1), which provides for State interest liability under regulations to be issued by the Treasury, was altered to ensure that this would only be true "when not inconsistent with program purposes." This is because certain Federal assistance programs, e.g., revolving loan funds or revolving construction grant funds, specifically contemplate that interest earned by a State on undisbursed program balances will be channeled back into the program as part of its funding.

Subsection 4(b)(1)(c)(3) provides that if a State owes interest on funds advanced from a trust fund for which the Secretary of the Treasury is trustee, the interest should be credited to that fund (ie., rather than to the Treasury). This has been "balanced" by adding language stating the corollary proposition: That if the Federal Government owes interest in connection with such a program, such interest should be charged against the trust fund in question (rather than the General Fund at the Treasury).

Subsection 4(b)(1)(i) has been amended to specify that actual exchanges of interest between the Federal Government and a State are to take place "on an annual basis." It is the Committee's understanding that this was the payment interval contemplated all along by the Federal/State Task Force in its deliberations, and it was considered desirable to so indicate in the legislation.

At the markup on April 14, 1988, the Committee approved the Sasser-Roth substitute by a voice vote, and agreed to report the bill favorably as amended by a vote of 10–0:

YEAS—10	NAYS—0
Nunn	
Levin	
Sasser	
Pryor	
Mitchell	
Roth	
Stevens	
Rudman	
Heinz	
Glenn	
Bingaman [1] (proxy)	
Cohen (proxy)	
Trible (proxy)	

[1] By Committee rules proxy votes are counted for recording purposes only on final passage.

The text of S. 1381, as reported, is as follows:

SHORT TITLE

SEC. 1. This Act may be cited as the "Cash Management Improvement Act of 1988."

PURPOSE

SEC. 2. It is the purpose of this Act to increase equity in the exchange of funds between the Federal Government and the States and to increase the efficiency of efforts to manage cash throughout the Government by providing additional procedures and incentives for cash management.

DISBURSEMENT OBJECTIVES

SEC. 3. (a) DISBURSEMENT OF FEDERAL FUNDS.—Subchapter II of chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 3720B. Disbursement of Federal Funds

"Each head of an Executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary. The Secretary may collect from any executive agency which does not comply with the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund of the Treasury caused by such noncompliance. The amounts of the charges paid under this section shall be deposited in the Treasury and credited as miscellaneous receipts. Any charge assessed by the Secretary under this section shall, to the maximum extent practicable, be paid out of appropriations available for agency operations and shall not reduce program funding levels.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 37 of such title is amended by inserting after the item relating to section 3720A the following new item:

"3720B. Disbursement of Federal funds.".

(c) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations, including the regulations required under section 3720B of title 31, United States Code (as added by subsection (a) of this section) to ensure the full implementation of such section 3720B by October 1, 1988.

PAYMENT OF INTEREST

SEC. 4. (a) DEFINITIONAL AMENDMENTS.—Section 6501 of title 31, United States Code, is amended—

(1) by redesignating clauses (7), (8), and (9) as clauses (8), (9), and (10), respectively;

(2) by inserting after clause (6) the following new clause:

"(7) 'Secretary' means the Secretary of the Treasury."; and

(3) by striking out clause (9) (as redesignated by clause (1) of this subsection) and inserting in lieu thereof the following:

"(9) 'State' means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State but does not mean a local government of a State.".

(b)(1) INTERGOVERNMENTAL FINANCING.—Section 6503 of title 31, United States Code, is amended to read as follows:

"§ 6503. Intergovernmental financing

"(a) Consistent with program purposes and with regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, the head of an executive agency carrying out a program shall schedule the transfer of funds to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a State.

"(b) Consistent with program purposes and with regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, a State shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes.

"(c)(1) The Secretary shall issue regulations that will require a State, when not inconsistent with program purposes, to pay interest on funds from the time that funds are deposited to the State's account until the time that funds are paid out in order to redeem checks or warrants or make payments by other means for program purposes. Such interest shall be calculated at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

"(2) Amounts received as payment of interest under this subsection shall be deposited in the Treasury and credited as miscellaneous receipts, except as provided in paragraph (3) of this subsection.

"(3) If interest is paid under paragraph (1) of this subsection on funds paid to a State from a trust fund for which the Secretary of the Treasury is the trustee, such interest shall be credited to such trust fund. If interest is paid under subsection (d) of this section as a result of a State disbursing its own funds for programs for which the Secretary of the Treasury is the trustee, such interest shall be charged against such trust fund.

"(d) If a State disburses its own funds for program purposes in accordance with Federal law, regulation, or Federal-State agreement, the State shall be entitled to interest from the time when the State's funds are paid out to redeem checks or warrants, or make payments by other means, until the Federal funds are deposited to the State's bank account. The Secretary shall pay, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary for interest owed to a State under this subsection. Such interest shall be calculated, at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

"(e) The budget submitted by the President under section 1105 of this title for a fiscal year shall include a statement specifying, for the most recently completed fiscal year, amounts of interest paid to the Federal Government under subsection (c) of this section and payments of interest to States under subsection (d) of this section.

"(f) If a State receives refunds of funds, the State shall return those refunds to the executive agency administering the program or apply those funds to reduce the amount of funds owed to the

State under such program. Interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this section.

"(g) If the Federal Government makes a payment to a recipient under a Federal program, and a portion of the payment is an amount which the Federal Government is paying to such recipient on behalf of a State, such amount shall be considered to be a transfer of funds between the Federal Government and the State for purposes of this section.

"(h) A State may not be required by a law or regulation of the United States to deposit funds received by it in a separate bank account. However a State shall account for funds made available to the State as United States Government funds in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate Federal executive agency on the status and the application of the funds, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the funds received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing in accordance with chapter 75 of this title.

"(i) The Secretary shall prescribe methods for the payment of interest, in an annual basis, between the Federal Government and the States, including provisions for offsetting amounts owed by the respective parties. Such methods of payment shall provide for comparable treatment in manner, technique, and timing for both the States and the Federal Government.

"(j) The Inspector General of an executive agency, or an officer of an executive agency performing functions similar to an Inspector General, in the case of an agency in which an Inspector General has not been established by law, shall periodically conduct audits of the implementation of this section. Periodic audits of the implementation of this section shall also be conducted by the States within the scope of work performed under chapter 75 of this title.

"(k) Consistent with Federal program purposes and regulations of the Director of the Office of Management and Budget, the head of a Federal executive agency carrying out a program shall execute grant awards on a timely basis to assure the availability of funds to accomplish transfers in compliance with subsection (a) of this section.

"(l) In determining the amount to be paid by a State to the Federal Government under subsection (c) of this section, or to a State by the Federal Government under subsection (d) of this section, the Secretary shall consider costs incurred by the State in determining the amount due.".

(2) The item relating to section 6503 in the chapter analysis for chapter 65 of title 31, United States Code, is amended to read as follows:

"6503. Intergovernmental Financing.".

(c) APPLICATION OF AMENDMENTS.—

(1) Subject to subparagraph (2) of this subsection, the provisions of this section and the amendments made by this section shall apply to all Federal programs and shall supersede the

provisions of any Federal law or regulation in effect on the date of enactment of this title.

(2) The provisions of subparagraph (1) of this subsection shall apply only to programs and fund transfers involving those executive agencies that are subject to regulation by the Secretary of the Treasury under section 3720B of title 31, United States Code.

(d) EFFECTIVE DATES.—The amendments made by this section shall take effect on the date of enactment of this Act, except that the provisions of section 6503 of title 31, United States Code (as added by subsection (b) of this section) which relate to the payment and receipt of interest by the Federal Government and State Governments shall take effect two years after the date of enactment of this Act.

IMPROVING THE COLLECTION AND DEPOSIT OF GOVERNMENT RECEIPTS THROUGH NATIONAL LOCKBOX SYSTEMS

SEC. 5. (a) DEFINITIONS.—For purposes of this section—

(1) the term "executive agency" has the same meaning as in section 102 of title 31, United States Code;

(2) the term "lockbox system" means a system under which—

(A) persons owing payments to an executive agency transmit such payments to a locked post office box in offices of the United States Postal Service; and

(B) such payments are collected from such box by a financial institution and are credited by such institution to the account of such agency without any specific action by such agency; and

(3) the term "Secretary" means the Secretary of the Treasury.

(b) STUDY.—The Secretary shall study and make recommendations concerning standards for the establishment of lockbox systems for executive agencies. In conducting such study, the Secretary shall—

(1) consider—

(A) the feasibility of establishing such systems;

(B) the benefits and costs of establishing such systems; and

(C) the needs of each executive agency for such a system;

(2) develop methods of internal controls and accounting by which the Government can assure that payments received through a lockbox system will be promptly and fully credited to the Treasury of the United States;

(3) develop criteria for the adoption of lockbox systems by executive agencies;

(4) analyze the feasibility and costs of operating lockbox systems through the Department of the Treasury, the Federal Reserve Board, or other appropriate executive agencies; and

(5) develop recommendations for the establishment of lockbox systems by executive agencies, with the cost of establishing and operating such systems paid by appropriated funds.

(c) REPORT.—Within one hundred eighty days after the date of enactment of this Act, the Secretary shall submit a report on the study conducted under subsection (b) to the President pro tempore of the Senate and the Speaker of the House of Representatives. The report shall describe the findings of the study and contain such recommendations as the Secretary considers appropriate.

(d) GUIDELINES.—Within ninety days after submitting the report required under subsection (c), the Secretary shall prescribe guidelines which specify procedures to be used by executive agencies in determining whether to establish and operate lockbox systems.

(e) SUBMISSION OF REPORT TO THE SECRETARY.—Within ninety days after the Secretary prescribes guidelines under subsection (d), the head of each executive agency shall submit to the Secretary a report describing the plans of such agency for the establishment of a lockbox system of specifying the reasons why such a system is not feasible or cost effective for such agency.

V. SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section states that this Act may be cited as the "Cash Management Improvement Act of 1988."

Section 2. Purpose

This section states that the purpose of this Act is "to increase equity in the exchange of funds between the Federal Government and the States," as well as to increase the efficiency of efforts to manage cash throughout the Government by providing additional incentives for cash management. The language quoted here was added to the original version in S. 1381 to emphasize that equity and comparability of treatment in cash transfers, between the Federal Government and the States, is a cornerstone of this legislation. The incentives for improved cash management include (1) the establishment of disbursement objectives similar to collection objectives which were mandated in the Deficit Reduction Act of 1984 and are detailed in section 3720 of title 31, (2) the adoption of intergovernmental financing concepts developed by the Federal/State Cash Management Reform Task Force and agreed to in June 1983 and November 1985 memoranda of understanding, and (3) the expansion of the use of lockboxes as a means of speeding up the deposit of Government collections.

Section 3. Disbursement objectives

This section adds section 3720B to subchapter II of chapter 37 of title 31 to allow the Department of the Treasury to accomplish the same objectives for disbursements as are now permitted for collections under section 3720 of chapter 37.

Agency heads are to provide for the timely disbursement of Federal funds through cash, checks or electronic funds transfer in accordance with regulations prescribed by the Secretary of the Treasury. It is the Committee's understanding that the provisions of this section apply to disbursements for Federal assistance programs, and that the regulations to be prescribed by the Secretary will reflect that understanding. This section does not apply to vendor pay-

ments by the Federal governments; interest on such disbursements is already required to be paid by the Federal agency involved, under the provisions of the Prompt Payment Act of 1982, as amended (title 31 of United States Code, section 3902).

The Secretary is authorized to collect from the agency an amount determined to be the cost to the general fund caused by an agency's noncompliance. In terms of disbursements, this means that the Secretary may in his discretion backcharge an agency for interest payments resulting from untimely disbursement by the agency. The Secretary has comparable authority to collect costs of noncompliance with regulations, with regard to collections under existing section 3720.

However, the Committee understands from discussions with Treasury officials that the authority afforded by section 3720, though often invoked to compel agency compliance, has rarely if ever been enforced. The Committee wishes to emphasize its understanding an intent that the same policy will be applied to the authority provided hereunder, e.g., that the Secretary will not routinely backcharge all interest payments incurred by an agency, but would do so only in instances of egregious or repeated noncompliance. In discussions with Committee staff members, Treasury officials have emphasized two points: First, that (as proven by their experience with collection regulations under section 3720) the mere existence of such authority is not nugatory, by reason of its scarce application, but provides a real and effective tool to compel agency compliance; and second, that inclusion of such authority in this bill underscores the primacy of the Department of the Treasury in coordinating Federal disbursement policies.

Two changes were made to the original test of subsection (3)(a) of S. 1381. The first, made at Treasury's request provides that any penalties which are charged against an agency will be deposited to Treasury to be credited as miscellaneous receipts (the "General Fund"), rather than to the Cash Mangement Improvements Fund. This is because the General Fund will be the direct source of any interest payments to the States under the interest exchange provisions of S. 1381, specifically, under subsection (b)(1)(d) of Section 4 of the bill. Therefore, if an agency is "backcharged" for incurring unreasonable interest charges on the Federal government's behalf it is logical to make the General Fund whole for this expense.

Second, language was added that any charge assessed against an agency under this section shall, "to the maximum extent practicable," be paid out of appropriations available for agency operations and shall not reduce program funding levels. This is to insure that the burden of the penalty is borne by the noncomplying agency, rather than by the States, which would suffer from any diminution in program funds. The language specifically quoted here is in recognition of the fact that funding is made available to certain agencies, such as the Highway Trust Fund, without differentiation between "operation budgets" and "program funds." Thus, the Secretary is granted some flexibility in assessing penalities, but is to adhere to the general principle that they not be paid out of program funds whenever this can be avoided. In this connection, it should be noted that although Federal grant awards are within the scope of Federal funds disbursements covered by proposed section

3720B, any "baskcharges" against the administering Federal agency should not impact grant funds intended for the States.

Section 4. Payment of interest

Section 4 contains the primary legislative recommendations of the Joint Federal/State Cash Management Reform Task Force ("Federal/State Task Force") to amend the Intergovernmental Cooperation Act (31 U.S.C. 6503(a)). The Committee's intent is: (1) to create a set of government-wide cash management policies and practices that can govern exchange of funds between the Federal and State Governments; (2) to establish intergovernmental cash management practices which assure that neither the Federal nor State Governments benefit or suffer financially as a result of the transfer of cash between the two governments; and (3) to ensure that the Federal and State Governments, to the maximum extent possible, accord each other the same equitable treatment with regard to the timing and manner of transfers and management of funds.

In addition, the Committee understands that the Department of Health and Human Services ("HHS") and OMB are working with several States to test the feasibility of an annual grant award process as outlined in the Memorandum of Understanding of November 1985. The Committee strongly urges that consistent with the provisions of this Act, the Secretary of the Department of Health and Human Services shall continue existing state pilot test programs to determine the feasibility of establishing annual awards, for programs within the Secretary's jurisdiction in which awards have historically been made on a quarterly basis.

Definitional Amendments

Subsection (4)(a) contains definitional amendments to section 6501 of title 31, stipulating that "Secretary" means the Secretary of the Treasury and that "State" means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State but does not mean a local government of a State.

Intergovernmental Financing

The language contained in section 4, subsection (b)(1) of the bill, which replaces section 6503 of title 31, provides that:

(1) Consistent with program purposes and regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, the head of an executive agency is to minimize the time elapsing between the transfer of funds by Treasury and the issuance of payments by a State (subsection (b)(1)(a)); the same obligation to minimize this timeframe rests on a State (subsection (b)(1)(b)). It is the Committee's understanding that in accordance with the Memoranda of Understanding agreed to by the Federal/State Task Force, each State will agree with the Secretary on one or more procedures for drawing down Federal funds for all Federal programs administered by that State. These may include one or more of the following options: (1) "checks paid letter of credit," under which a commercial bank, at which the State maintains its

account, wires for Federal funds on a daily basis as checks issued by the State are cashed (resulting in a net "zero balance" at day's end); (2) the "delay of draw" method devised by HHS in 1982, under which a State first issues checks, and funds are then drawn down using historical clearance patterns to meet anticipated payment needs; (3) "checks issued letter of credit with interest paid or credited," under which a State may continue to draw down funds in advance of issuing checks, with interest calculated from the time of drawdown until the payment of the checks (or warranties); or such other method as the Secretary and a State mutually agreed upon. The Committee understands that of the foregoing options only number (3) would result in interest becoming due from a State.

(2) The Secretary is to issue regulations that require a State, "when not inconsistent with program purposes," to pay interest on Federal funds that are received in advance of need (from the time they are deposited to the State's account until the time they are paid out to redeem checks or warrants or to make payment by other means for program purposes) (subsection (b)(1)(c)(1)). The quoted language has been added to this subsection as it originally appeared in S. 1381. It is the Committee's understanding and intent that the funds transfers to which this subsection applies are those funds transferred by the Federal Government to a State with the intent that they be disbursed for program purposes, with the exception of those funds provided to the State for the purposes of either (1) establishing loan funds to be administered by the State (for instance, the National Direct Student Loan ["NDSL"] program) as to which interest earned on undisbursed balances must be retained by the loan programs; or (2) funds given to the State under programs (for instance, for construction purposes under the Clean Water Act) which specifically provide that interest earned on unexpended balances held by the State is to be applied to program purposes. It would be anomalous, for example, for Congress to appropriate less than 100% of the funding required under a Federal program for a State construction project, with the specific intent that interest earnings be used to complete funding, only to have the Treasury attempt to recover such interest under the provisions of this bill. Therefore, the regulations to be issued by the Secretary of the Treasury pursuant to subsection (b)(1)(c)(1) should reflect the foregoing distinctions.

(3) Subsection (b)(1)(c)(1) also specifies that interest payments are to be calculated using the average bond equivalent rates of 13-week Treasury bonds auctioned during the period for which interest is calculated, as determined by the Secretary. The Committee understands that this period will typically be one year, since interest due to the Federal Government from a State under this subsection (see paragraph (2) above) and interest due to a State from the Federal Government under subsection (b)(1)(d) (see paragraph (5) below) will be netted on an annual basis pursuant to subsection (b)(1)(i) (see paragraph (11) below). The Committee further understands that the Task Force considered whether calculation should be made of "interest on interest" accrued during this annual period, but rejected this idea since it would overcomplicate the process for little appreciable benefit.

(4) Interest payments received by the Federal Government from a State are to be credited as miscellaneous receipts in the Treasury (subsection (b)(1)(c)(2)), with the following exception. Under subsection (b)(1)(c)(3), in cases where the Secretary is required by law to invest funds that are in a specific account (e.g., the Highway Trust Fund), any interest payable by a State on monies received from such account shall be credited to that trust fund account. The original provision in S. 1381 did not, however, address the converse situation, in which interest is owed to a State which advanced its own funds for Federal program purposes, while awaiting reimbursement from a trust fund. Thus, the substitute version of subsection (b)(1)(c)(3) provides that in the foregoing circumstances, interest payable to a State shall be charged against the trust fund in question. It is the Committee's understanding and intent, however, that in the event that interest due between a State and the Federal Government is offset, as provided for in subsection (b)(1)(i), with the result that funds otherwise due or payable are not actually "exchanged" between the State and an indicated trust fund, then any outstanding credits to or charges against such trust fund shall be credited or charged between the trust fund and the account for miscellaneous receipts at the Treasury (to which the State would ordinarily pay interest; see paragraph (4) above). For example, at the time when interest payments are due under subsection (b)(1)(i), a State may owe the Treasury $100,000 in interest on Federal funds advanced to the State for non-trust fund programs. For the same payment period, assume that the State is entitled to $100,000 in interest on funds it advanced for Highway Trust Fund purposes. Under subsection (b)(1)(i), these amounts may be offset as between the State and the Federal Government (i.e., the Treasury). Nevertheless, in this example, $100,000 should be "charged against" the Highway Trust Fund, payable to the account for miscellaneous receipts at the Treasury.

A separate reference to the Unemployment Trust Fund (the "Fund"), in the original version of S. 1381, was intended to be illustrative only and has been deleted as surplusage. The Committee wishes to reaffirm, but at the same time to clarify, the applicability of this bill to that Fund. Although by law, the Secretary must invest the Fund "as a single fund," he must also maintain separate book accounts in the Fund for each State, containing its deposits to the Fund. Thus, it might be asked whether this bill wouldn't require charging the States interest for drawing down their own money. However, as with any disbursement of funds to which S. 1381 applies, drawdown by a State even of its "own" money, too far in advance of actual disbursement needs, reduces Federal investment opportunities. In this case, it impairs the Secretary's fiduciary obligation to invest the Fund as a single entity and moreover, reduce the interest credited to the account of the State in question. Thus subsection (b)(1)(c)(3) merely requires a State to remit the equivalent of this interest to the Fund, for crediting to its own book account. This necessarily implies, however, and the Committee wishes to clarify, that pending their disbursement, States may deposit drawdowns from the Fund in interest-bearing accounts. Indeed, S. 1381 contemplates generally that States will invest funds drawn down for Federal program purposes, making the appropriate

remittances to the Federal Government. In the case of the Unemployment Trust Fund, those remittances will be credited to the appropriate State account and will remain "State" money.

(5) If a State disburses its own funds for program purposes in accordance with Federal law, regulation, or Federal-State agreement (i.e., in advance of receiving actual Federal funds for the purpose), the State is to be paid interest by the Federal Government from the time the State's funds are paid out to redeem checks or warrants, or make payments by other means, until Federal funds are deposited to the State's account (subsection (b)(1)(d)). This mirrors the provision that applies in cases where the State receives Federal funds in advance of need (when interest accrues from the advance deposit of Federal funds, until payment by the State to the program recipient). Interest is meant to be earned on mutually equitable terms, by whichever side which is "out-of-pocket" in a given transaction. Thus, the Committee would not accept the suggestion, made by Assistant Treasury Secretary Murphy at the July 22, 1987 hearing, that this subsection be changed so that the Federal Government's liability for interest would arise only if a Federal agency were at "fault" for failure to provide funds available to it and "obligated" for the purpose.

When a State expects to be made whole for using its own money to operate a Federal program, it should not bear the risk of the Federal agency's non-payment (whatever the reason), any more than the Federal Government (in the converse situation) would forebear interest because of the State's explanation why it drew down Federal money too far in advance of need. The Committee wishes to clarify, of course, that interest is only calculable and due to the State on such portion of program disbursements which it was the agreed obligation of the Federal Government to pay under the pertinent law, regulation, or agreement. If, for example, the State has a matching fund obligation, by which it is contemplated that 40% of the program funding will be borne by the State and 60% by the Federal Government, then although it may be the State which initially "disburses its own funds" for 100% of the program cost, interest may only be charged against the Federal Government on its 60% share. However, the Committee further notes that in the case of loan fund programs administered by the State (for example, the NDSL, as discussed in paragraph (2) above), in instances where the State advances its own funds for such program, the interest accruable on such State-advanced funds is not required to be retained in the loan fund (as would ordinarily be the case, with respect to interest earned on Federal funds in the loan account), but may be claimed by the State under this subsection (b)(1)(d).

(6) The language contained in subsection (b)(1)(d) is intended to include programs authorized under the Federal Aid Highway Program. It is intended by the Committee that a State shall be entitled to calculate interest due to it from the Federal Government, including interest for that period after State funds have been used but prior to submission of a formal request for reimbursement, or "bill," to the Federal Government, subject to the following conditions: (1) that the State relate such eligible amounts used to programs and projects that the Federal Government has approved, au-

thorized, and "placed under agreement," and (2) that the State is submitting reimbursement billings on a timely basis. The Committee anticipates that the Federal Government and each State Government, in negotiating their respective Federal/State agreements (i.e., the means "mutually agreed upon" for Federal funds transfers pursuant to subsections (b)(1) (a) and (b)), will include provisions addressing the timeliness of submissions of highway construction reimbursement bills by the States to the Federal Government, and defining the period of time for which interest can be calculated prior to submission of these bills.

(7) In addition under (subsection (b)(1)(d), interest owed to a State by the Federal Government is to be paid in the first instance from funds in the Treasury not otherwise appropriated (commonly called the "General Fund"). As discussed above, such amounts may in appropriate circumstances be recouped by Treasury in the form of a penalty against the agency involved; and in cases involving reimbursement to a State from a trust fund, interest is to be charged against such trust fund. To provide accountability, the President's budget (as submitted under section 1105 of title 31) is to specify for the most recently completed fiscal year interest paid to and by the Federal Government under the new section 6503 (subsection (b)(1)(e)).

(8) Where a State receives a refund of Federal funds (i.e., from a third source), those funds are to be returned to the applicable Federal agency program or applied to reduce any amounts owed the State by the Federal Government under the program. Interest earned by the State on these funds is to be returned to the Federal Government, and to accomplish this, these amounts are to be considered in setting the interest amounts due between the State and Federal Governments (subsection (b)(1)(f). This subsection in the original S. 1381 has been modified by deleting before the word "funds" the qualifier, "grant," which appears in existing section 6503 of title 31. This is to clarify that the new section 6503 deals with cash transfers generally for Federal program purposes and not just grant funds as that term is defined in section 6501(4) of title 31. The same is true of subsection (b)(1)(h), discussed in paragraph (10) below).

(9) The cash management principles detailed in the new section 6503 apply to programs (present or future) where the Federal Government makes payments in behalf of a State (subsection (b)(1)(g)). The principal example is the Supplemental Security Income program in which a number of States supplement the basic SSI grant. For this program, the Federal Government makes the supplemental payment for a State by adding the State's amount to the check or payment the recipient receives from the Federal Government. A State's remittance to the Federal Government for the State share of the payment is to be timed to coincide with the clearance time of Federal checks or payments by any other means. If not, interest would be due the Federal Government under the provisions of this subsection. Similarly, if the Federal Government holds a State's remittance for its share of the payment in the Federal Treasury prior to making the payment to the recipient (meaning the State payment was made early), interest would be due the State under the provisions of this subsection.

(10) A State is not required to deposit money received from the Federal Government in a separate bank account, but is to account for these funds as Federal money and is to report periodically on the status and use of these funds (subsection (b)(1)(h); again, the terms "grant money" and "grant funds" in the original Senate bill have been modified to the more general terms "money" and "funds" for the reason heretofore stated). Detailed records related to these funds, while not required to be included with the aforementioned periodic reports, are to be available to the agency head and the Comptroller General for auditing in accordance with the Single Audit Act (chapter 75 of title 31).

(11) The Secretary is to prescribe the methods of paying interest between the State and Federal Governments but must assure comparable treatment for both parties and may offset amounts owed (subsection (b)(1)(i)). This subsection of S. 1381 has been amended to specify that interest payments are to be exchanged and/or offset on a yearly basis between the Federal Government and a State. This provision accords with the Committee's understanding of the payment interval contemplated by members of the Federal/State Task Force, as indicated in paragraph (3) above.

(12) The Inspector General, or an agency official performing similar functions where an Inspector General has not been established in law, is to periodically audit Federal agency implementation of this section (subsection (b)(1)(j)). The Committee emphasizes the importance of timely monitoring of the Federal agency performance under this section, and further understands and intends that "period" and "periodically," as used in this subsection, shall mean not less than once every two years. States are expected to make similar audits under the scope of work to be performed under the Single Audit Act (chapter 75 of title 31). This is in recognition of the fact that records pertaining to the implementation of this section will typically be developed and maintained at the State level by a single agency such as a comptroller's or treasurer's office, and that an audit of such records can be performed most efficiently and at least cost under the terms of the Single Audit Act.

(13) Consistent with Federal program purposes and regulations, the Federal Government is to execute grant awards on a timely basis to assure the availability of Federal funds when needed by a State to make payments under a Federal program (subsection (b)(1)(k)). Authority to issue the regulations in question is vested in the Director of the Office of Management and Budget, rather than in the Treasury Secretary as in the original Senate bill, because of OMB's primary responsibility for carrying out grant awards. As noted above, the Committee is anxious that HHS and OMB shall continue existing state pilot test programs to determine the feasibility of establishing grant awards on an annual basis, for programs in which awards have traditionally been made on a quarterly basis.

(14) Costs incurred by a State to determine the amounts due under this section are to be considered by the Treasury Secretary in establishing the amount of interest to be paid by a State (subsection (b)(1)(l)). It is anticipated that each State will keep track of those payments for which interest should be paid by the Federal Government or the State and, if so, will be reimbursed for the addi-

tional cost to the State of determining the interest due. However, it is the Committee's intent that when the Secretary considers such costs, any effect of such costs upon the net amounts to be paid by the State or Federal Governments shall be reflected only in accounts maintained by the Treasury for the purpose of facilitating the exchange of interest determined to be due under subsections (b)(1)(c) (1)–(2) and (b)(1)(d) (i.e., interest not related to trust fund transactions), and shall not affect the amounts of interest that the Secretary is authorized to credit to or charge against trust funds, as provided under subsection (b)(1)(c)(3). Federal officials considered this clarification important because certain trust funds, such as that administered by the Federal Aid Highway Program, are prohibited to accept such charges for what are essentially "administrative" costs.

Application of Amendments

Subsection (c)(1) to section 4 of the bill states that, subject to subsection (c)(2), the provisions of section 4 and the amendments made thereby "shall apply to all Federal programs and shall supersede the provisions of any Federal law or regulation in effect on the date of enactment of this law." It is the intent of the Committee that this cross-cutting language be construed to apply to all Federal assistance programs, including all trust funds for which the Secretary of the Treasury is the trustee; provided, however, that in prescribing administrative regulations the Secretary shall give due consideration to the particular requirements of construction programs authorized under the Federal Aid Highway Program.

Subsection (c)(2) qualified the foregoing to clarify that the provsions of section 4 are to be construed and implemented in a manner consistent with the language contained in proposed new section 3720B of title 31, as set forth in section 3 of S. 1381. The language in section 3720B is in turn derived from that of existing section 3720 of title 31, to which it is comparable in scope.

Effective Dates

Subsection (d) of section 4 of the bill provides that it is effective upon enactment, except that the States and the Federal Government will be afforded two years before the interest payment procedures of new section 6503 of title 31 go into effect. It is anticipated that this period will give both sides sufficient time to make improvements in cash management practices and procedures, and to put into effect the system (including the Federal/State agreements, contemplated by subsections 4(b)(1) (a)–(b)) needed to implement the interest payment provisions of this section.

Section 5. Improving the Collection and Deposit of Government Receipts Through National Lockbox Systems

Subsection (e) is enacted for the purpose of improving the collection and deposit of Government receipts through lockbox systems. A lockbox system is the use of locked Post Office boxes to receive payments and to speed up the deposit of collections to the Government's account. Persons owing money to the Federal Government, instead of remitting the payment to the executive agency involved,

transmit such payments to a lockbox. Payments are collected from the lockbox by a financial institution and credited to the Government's account without any action by the Federal agency involved.

The Secretary of the Treasury is to study and make recommendations for the establishment of lockbox systems. In making the study, the Secretary is to:

(1) consider, among other things, the feasibility and needs of each agency and the benefits and costs of establishing such systems;

(2) develop adequate internal controls and accounting procedures to protect the Government's interests and to assure that payments are promptly and fully credited to the Federal Government's account;

(3) develop criteria for adoption of lockbox systems by executive agencies;

(4) analyze the feasibility and costs of operating lockbox systems through Treasury, the Federal Reserve Board, or other appropriate executive agencies (rather than through a financial institution); and

(5) develop recommendations for the establishment of lockbox systems by executive agencies, with the cost of establishing and operating the systems to be paid by appropriated funds.

The report on the study is to be submitted to Congress within 180 days of the enactment of this subsection. Within 90 days following the report, the Secretary is to prescribe guidelines for establishing lockbox systems. The agencies then have 90 days to submit plans to the Secretary for implementing the guidelines and establishing lockbox systems, or else to specify reasons why a lockbox system is not feasible or cost effective.

VI. MATTERS REQUIRED TO BE DISCUSSED UNDER SENATE RULES

A. Committee Consideration of S. 1381

The Committee met on April 14, 1988 to consider S. 1381. Senator Sasser offered an amendment, on behalf of himself and Mr. Roth, in the nature of a substitute for the bill. Upon a motion by the Chairman, it was adopted unanimously on a voice vote.

Upon a further motion by the Chairman, the bill as amended was ordered reported by a vote of 13–0.

B. Cost of the Legislation

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 21, 1988.

Hon. John Glenn,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1381, the Cash Management Improvement Act of 1987.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: S. 1381.

2. Bill title: Cash Management Improvement Act of 1987.

3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, April 14, 1988.

4. Bill purpose: The bill would authorize the Secretary of the Treasury to issue regulations that would require a state to pay interest on federal grant funds it receives before checks for the grant-related activities are cashed. Such a program, often referred to as the State/Federal Equity Program, would also require the federal government to pay interest to a state that has to disburse its own funds before receiving a tardy government grant payment.

The bill would direct the Secretary of the Treasury to prescribe regulations that promote the timely disbursement of federal funds and to collect fines from agencies that do not comply with such regulations. The Secretary also would have to stay the use of lockbox systems for federal agencies.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
State/Federal Equity Program:					
Estimated budget authority			−47	−49	−50
Estimated outlays			−47	−49	−50

Basis of estimate: The State/Federal Equity Program would result in net additional receipts to the federal government of $45 million to $50 million annually, beginning in 1991. Under current law and Office of Management and Budget directives, states and the federal government have implemented an agreement to minimize early or late payment of federal grant funds, but there is no requirement of interest payments. The estimate of receipts is the amount of interest the federal government would receive in excess of the amount of interest it would have to pay to the states under the program. The estimate is based on information from the Department of the Treasury, data from a pilot program with four states, and CBO's baseline assumptions for grant programs. Because the bill would direct the Treasury to implement the program two years after enactment of the bill, we assume the first full year of implementation would be 1991.

6. Estimated cost to State and local governments: The estimated receipts to the federal government from enactment of S. 1381 would be paid by the states. Thus, enactment of this bill would result in additional costs of $45 million to $50 million annually for state governments.

7. Estimate comparison: None.

8. Previous CBO estimate: On October 23, 1987, CBO transmitted to the Senate Committee on Governmental Affairs a cost estimate for the reconciliation proposals agreed to by the committee, including the Cash Management Improvement Act of 1987. This estimate for S. 1381 differs from the reconciliation estimate in that it does not show receipts in 1989 and 1990 because the bill would delay the effective date of the program until two years after enactment.

9. Estimate prepared by: Jim Hearn.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

C. Evaluation of Regulatory and Paperwork Impact

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 1381. It has also considered the bill's impact on the privacy of individuals or firms doing business with the Federal Government. The Committee's evaluation under paragraph 11(b) must include the four elements listed below.

1. An estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses. S. 1381 would not result in any additional regulation of individuals and businesses.

2. A determination of the economic impact of such regulation on the individuals, consumers, and businesses affected. Not applicable.

3. A determination of the impact on the personal privacy of the individual affected. Not applicable.

4. A determination of the amount of additional paperwork that will result from the regulations to be promulgated pursuant to the legislation, including estimates of the amount of time and financial cost required of affected parties, as well as reasonable estimates of the recordkeeping requirements that may be associated with the legislation. Essentially no additional paperwork is imposed upon the public by S. 1381. The interest exchange provisions contained in Section 4 of the bill would result in some recordkeeping requirements on the part of the State and Federal Governments which (1) should not represent a substantial burden (and the cost of which, to the States, is to be taken into account by the Secretary of the Treasury in calculating interest due), and (2) should result in the absorption and/or reduction of some existing requirements.

D. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the statutory provisions of the bill are as follows (existing law provisions to be omitted is enclosed in brackets, new material is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 31—MONEY AND FINANCE

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CHAPTER 37—CLAIMS

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Subchapter II—Claims of the United States Government

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3720B. Disbursement of Federal Funds

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§ 3720B. Disbursement of Federal Funds

Each head of an Executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary. The Secretary may collect from any executive agency which does not comply with the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund of the Treasury caused by such noncompliance. The amounts of the charges paid under this section shall be deposited in the Treasury and credited as miscellaneous receipts. Any charge assessed by the Secretary under this section shall, to the maximum extent practicable, be paid out of appropriations available for agency operations and shall not reduce program funding levels.

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CHAPTER 65—INTERGOVERNMENTAL COOPERATION

Sec.
6501. Definitions.
6502. Information on grants received.
6503. [Transfer and deposit requirements.] *Intergovernmental financing.*
6504. Use of existing State or multimember agency to administer grant programs.
6505. Authority to provide specialized or technical services.
6506. Development assistance.
6507. Congressional review of grant programs.
6508. Studies and reports.

§ 6501. Definitions

In this chapter—

(1) "assistance" means the transfer of anything of value for a public purpose of support or stimulation that is—

(A) authorized by a law of the United States;

(B) provided by the United States Government through grant or contractual arrangements (including technical assistance programs providing assistance by loan, loan guarantee, or insurance); and

(C) not an annual payment by the United States Government to the District of Columbia government under section 502 of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93–198, 87 Stat. 813, D.C. Code, 47–3406).

(2) "comprehensive planning" includes, to the extent directly related to area needs or needs of a unit of general local government—

(A) preparation, as a guide for governmental policies and action, of general plans on—

(i) the pattern and intensity of land use;

(ii) providing public facilities (including transportation facilities) and other governmental services; and

(iii) the effective development and use of human and natural resources;

(B) long-range physical and fiscal plans for an action referred to in subclause (A) of this clause (2);

(C) a program for capital improvements and other major expenditures based on their relative urgency, and definitive financing plans for the expenditures in the earlier years of the program;

(D) coordination of related plans and activities of States and local governments and agencies concerned; and

(E) preparation of regulatory and administrative measures to support the items referred to in subclauses (A)–(D) of this clause (2).

(3) "executive agency" does not include a mixed-ownership government corporation.

(4)(A) "grant" (except as provided in subclause (C) of this clause (4)) means money, or property provided instead of money, that is paid or provided by the United States Government under a fixed annual or total authorization, to a State, to a local government, or to a beneficiary under a plan or program administered by a State or a local government that is subject to approval by an executive agency, if the authorization—

(i) requires the State or local government to expend non-Government money as a condition of receiving money or property from the United States Government; or

(ii) specifies directly, or establishes by means of a formula, the amount that may be provided to the State or local government, or the amount to be allotted for use in each State by the State, local government, and beneficiaries.

(B) "grant" (except as provided in subclause (C) of this clause (4)) also means money, or property provided instead of money, that is paid or provided by the United States Government to a private, nonprofit community organization eligible to receive

amounts under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.).

(C) "grant" does not include—

(i) shared revenues;

(ii) payment of taxes;

(iii) payment instead of taxes;

(iv) a loan or repayable advance;

(v) surplus property or surplus agricultural commodities provided as surplus property;

(vi) a payment under a research and development procurement contract or grant awarded directly and on similar terms to all qualifying organizations; or

(vii) a payment to a State or local government as complete reimbursement for costs incurred in paying benefits or providing services to persons entitled to them under a law of the United States.

(5) "head of a State agency" includes the designated delegate of the head of the agency.

(6) "local government" means a unit of general local government, a school district, or other special district established under State law.

(7) "Secretary" means the Secretary of the Treasury.

[(7)] *(8)* "special-purpose unit of local government" means a special district, public-purpose local government of a State except a School district.

[(8)] *(9)* "State" means a State of the United States, the District of Columbia, a territory or possession of the United States, and an [agency or instrumentality] *agency, instrumentality, or fiscal agent* of a State but does not mean a local government of a State.

§ 6502. Information on grants received

On request of a chief executive officer of a State, or an official designated by either of them, an executive agency carrying out a grant program to States and local governments shall provide the requesting officer or legislature with written information on the purpose and amounts of grants provided to the State or local government.

[§ 6503. Transfer and deposit requirements]

[(a) Consistent with program purposes and regulations of the Secretary of the Treasury, the head of an executive agency carrying out a grant program shall schedule the transfer of grant money from the Treasury and the disbursement by a State, whether disbursement occurs before or after the transfer. A State is not accountable for interest earned on grant money pending its disbursement for program purposes.]

[(b) A State may not be required by a law or regulation of the United States to deposit grant money received by it in a separate bank account. However, a State shall account for grant money made available to the State as United States Government grant money in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate executive agency on the status and the application

of the money, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the grant received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing.]

§ 6503. Intergovernmental financing

(a) Consistent with program purposes and with regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, the head of an executive agency carrying out a program shall schedule the transfer of funds to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a State.

(b) Consistent with program purposes and with regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, a State shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes.

(c)(1) The Secretary shall issue regulations that will require a State, when not inconsistent with program purposes, to pay interest on funds from the time that funds are deposited to the State's account until the time that funds are paid out in order to redeem checks or warrants or make payments by other means for program purposes. Such interest shall be calculated at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(2) Amounts received as payment of interest under this subsection shall be deposited in the Treasury and credited as miscellaneous receipts, except as provided in paragraph (3) of this subsection.

(3) If interest is paid under paragraph (1) of this subsection on funds paid to a State from a trust fund for which the Secretary of the Treasury is the trustee, such interest shall be credited to such trust fund. If interest is paid under subsection (d) of this section as a result of a State disbursing its own funds for programs for which the Secretary of the Treasury is the trustee, such interest shall be charged against such trust fund.

(d) If a State disburses its own funds for program purposes in accordance with Federal law, regulation, or Federal-State agreement, the State shall be entitled to interest from the time when the State's funds are paid out to redeem checks or warrants, or make payments by other means, until the Federal funds are deposited to the State's bank account. The Secretary shall pay, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary for interest owed to a State under this subsection. Such interest shall be calculated, at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(e) The budget submitted by the President under section 1105 of this title for a fiscal year shall include a statement specifying, for the most recently completed fiscal year, amounts of interest paid to

the Federal Government under subsection (c) of this section and payments of interest to States under subsection (d) of this section.

(f) If a State receives refunds of funds, the State shall return those refunds to the executive agency administering the program or apply those funds to reduce the amount of funds owed to the State under such program. Interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this section.

(g) If the Federal Government makes a payment to a recipient under a Federal program, and a portion of the payment is an amount which the Federal Government is paying to such recipient on behalf of a State, such amount shall be considered to be a transfer of funds between the Federal Government and the State for purposes of this section.

(h) A State may not be required by a law or regulation of the United States to deposit funds received by it in a separate bank account. However, a State shall account for funds made available to the State as United States Government funds in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate Federal executive agency on the status and the application of the funds, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the funds received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing in accordance with chapter 75 of this title.

(i) The Secretary shall prescribe methods for the payment of interest, on an annual basis, between the Federal Government and the States, including provisions for offsetting amounts owed by the respective parties. Such methods of payment shall provide for comparable treatment in manner, technique, and timing for both the States and the Federal Government.

(j) The Inspector General of an executive agency, or an officer of an executive agency performing functions similar to an Inspector General, in the case of an agency in which an Inspector General has not been established by law, shall periodically conduct audits of the implementation of this section. Periodic audits of the implementation of this section shall also be conducted by the States within the scope of work performed under chapter 75 of this title.

(k) Consistent with Federal program purposes and regulations of the Director of the Office of Management and Budget, the head of a Federal executive agency carrying out a program shall execute grant awards on a timely basis to assure the availability of funds to accomplish transfers in compliance with subsection (a) of this section.

(l) In determining the amount to be paid by the State to the Federal Government under subsection (c) of this section, or to a State by the Federal Government under subsection (d) of this section, the Secretary shall consider costs incurred by the State in determining the amount due.

ADDITIONAL VIEWS OF SENATOR ROTH

The ideas encompassed in S. 1381 are the product of work done in the last four Congresses. The State/Federal Cash Management Reform Task Force contributed to this effort with the development of two memorandums of understanding, one in 1983 and 1985, as a means for ensuring equity in the exchange of funds beween the Federal Government and the States. The documents show the progress of years of negotiation and cooperation between the Federal Government and the States. Many of these ideas were included in my omnibus federal management bill in 1986, S. 2230. S. 1381 focuses on the provisions of Title IV of that legislation.

The procedures to be established under S. 1381 are indeed a reflection f the compromises agreed to by all parties. I thank Sen. Sasser for his work in bringing the States and the executive and legislative branches together again to work out the final draft of this legislation that has been accepted as a substitute.

The bill utilizes the "making whole" concept in that whoever has use of the money pays for it, compensating the other party for any loss of investment opportunity. Added to the bill is authority for the Treasury Department to penalize an agency that is chronically poor performer in its cash management. There is similar statutory language for the collection activity which was usd as a model for disbursements in this legislation. Discussions to resolve technical problems and fine tune the bill as introduced, culminating in the bill we report today, reflected the cooperation that has characterized this project since the Task Force's inception.

S. 1381 has been debated by the parties involved and a compromise, satisfactory to all, has been drafted for the consideration of Congress. Partners in this effort have been Senators on both sides of the aisle, the Treasury, and the States. The bill will save the taxpayer money, make government run more smoothly, and is agreed to by all sides. As I have said before, this is a piece of legislation that should be enacted.

APPENDIX

MEMORANDUM OF UNDERSTANDING
FOR FINANCING FEDERAL ASSISTANCE PROGRAMS

This is to confirm agreements reached by the Joint State/ Federal Cash Management Reform Task Force. The agreements include the attached cash management policies and are intended to achieve an equitable system of intergovernmental cash management.

We agree to work toward acceptance by and implementation of these policies in the State and Federal Governments. This includes:

- Pursuing resolutions at meetings of major State groups (i.e., NASBO and NASACT) endorsing the cash management policies;
- Initiating the necessary changes to implement the policies in the Federal agencies; and
- Undertaking, as soon as possible, pilot tests of the various funding alternatives provided by the policies, involving an appropriate number of States, Federal agencies, and programs.

It is agreed that the pilot tests will:

- Begin as soon as possible and last no more than six months, and will include an appropriate number of Federal programs;
- Examine the viability of the various proposed funding options, including:
  - Checks paid letter of credit.
  - Estimated checks cleared letter of credit (Delay of Draw).
  - Checks issued letter of credit with interest paid or credited (using, for example, the Separate Bank Account or Day of Disbursement method).
- Determine equitable methods for providing for administrative and start-up costs attributable to the specific cash management practices being implemented; and
- Serve as the first test of actual implementation of the proposed policies in the State and Federal Governments.

It is understood that States currently on the Delay of Draw method will continue using this method until they implement one of the funding methods provided for by the attached cash management policies. It is understood that Federal agencies will not proceed to expand use of the Delay of Draw method unless requested by a State.

If the results of the pilot tests are mutually satisfactory, it is further understood that the individual States will decide on and begin implementing a funding method, or methods, as soon as possible after the conclusion of the pilot tests.

John F. Rogan (Wisconsin)
State Finance Director

James F. Kelly
Deputy Associate Director,
Management Reform
Office of Management & Budget

Richard Standiford
(New Jersey)
Deputy Director, Division
of Budget and Accounting

John J. Jordan
Deputy Associate Director,
Finance and Accounting
Office of Management & Budget

Edward A. Mazur (Virginia)
Comptroller
Department of Accounts

William M. Henderson
Director, Cash Management
Office of Management & Budget

Julian Ridlen (Indiana)
State Treasurer

Russell Morris
Assistant Commissioner
Banking and Cash Management
Department of the Treasury

F. Arnold Schuler
(California)
Deputy State Controller

David V. Dukes
Deputy Assistant Secretary,
Finance
Department of Health and
Human Services

Attachment

Intergovernmental Cash Management Policies for Financing Federal Assistance Programs

1. There shall be a set of Government-wide cash management policies and practices that govern all exchanges of funds between Federal and State Governments.

2. Intergovernmental cash management practices should be such that neither the Federal nor State Governments benefit financially or suffer financially as a result of the transfer of cash in support of Federal assistance programs.

3. It is understood that the Federal Government is entitled to earnings on cash provided by the Federal Government to a State government prior to the time such cash is needed to redeem a warrant, a check, or payment by other means. It is also understood that a State government is entitled to earnings on cash advanced by such State government to redeem a warrant, a check, or payment by other means, prior to reimbursement by the Federal Government on programs for which Federal payment is required.

4. The Federal Government shall make grant allocations and awards in such a manner and in such amounts to assure that funds are adequate to meet State cash disbursement issuance requirements.

5. States shall bill based on actual cash disbursement needs or a close approximation of expected cash disbursement needs (plus the allowance for depreciation, amortization, and overhead costs, as approved in accordance with OMB Circular A-87).

6. Due to the variety of constitutional, statutory, and administrative restrictions existing among the 50 States, several techniques for transferring cash between Federal agencies and State governments shall be made available for selection by each State. These techniques are:

a. Checks paid letter of credit.

b. Estimated checks cleared letter of credit (Delay of Draw).

c. Checks issued letter of credit with interest paid or credited (using, for example, the Separate Bank Account or Day of Disbursement method).

7. States selecting the checks issued letter of credit with interest paid or credited option shall:

   - Draw down Federal funds as close as possible to the time of issuance of warrants, checks, or payments by other means.

   - Pay or credit the U.S. Treasury interest on the balance of Federal cash in banks/State treasuries based on the Federal funds rate; the specific rate and method to be determined.

8. Since the checks issued letter of credit with interest paid or credited option is new, there should first be a pilot test in three or four States in order to resolve any initial procedural or operational matters that may arise.

9. The Federal Government is willing to work with the States and State organizations to consider other financing systems or methods proposed by the States as long-range or future alternatives.

10. The Federal Government shall pay to or credit the appropriate State Treasury interest on the balance of State cash advanced on Federal programs based on the Federal funds rate; the specific method and rate to be determined.

11. Whenever feasible, each State and the concerned Federal agencies shall implement a single cash management technique for all Federal programs in which the State is participating.

12. Federal agencies and each State government will move as quickly as possible to adopt the technique(s) chosen by each State.

13. All transfers of funds between the States and the Federal Government shall be accomplished by wire transfer to ensure quick delivery of funds.

14. Where Federal statutes require reimbursement, the Federal Government shall revise regulations or administrative procedures to ensure that cash is transferred as closely as possible to the time that States make disbursements.

15. States will apply sound businesslike practices when disbursing Federal funds to secondary recipients and contractors, and not disburse or handle such cash at a faster rate or in a different manner than it handles its own cash.

16. For Supplemental Security Income State supplement payments, the same cash management principles shall be followed, except the State will be considered the disbursing agent and the Federal Government the payee.

17. Each State will designate a specific State official(s) (name and title) with the statutory or administrative authority to coordinate all State agencies to review, approve, and/or enter into an agreement with the U.S. Government for the purpose of implementing these cash management policies.

CHECKS PAID LETTER OF CREDIT

DESCRIPTION

Grantee is provided an irrevocable letter of credit to establish a separate zero-balance bank account in a commercial bank. Grantee issues warrants or checks for program purposes against the account, which are processed according to normal banking procedures.

At a predetermined time each day, the commercial bank totals the checks presented against the zero-balance account that day; telephones the district Federal Reserve or branch; and relays the name of the grantee for which it is drawing funds, the letter of credit number, and the amount of Federal funds needed that day. The Federal Reserve Bank verifies and obtains approval for the request. It then credits the commercial bank's reserve account the same day with a book entry, which in effect transfers the funds from its reserve account to the grantee's account. This enables the grantee to maintain the account with a zero balance at the end of each bank day.

The commercial bank normally requires a compensatory balance or payment of fees for handling the zero balance account.

ESTIMATED CHECKS CLEARED LETTER OF CREDIT SYSTEM (DELAY OF DRAW)

DESCRIPTION

The State is provided a letter of credit which is irrevocable to the extent the State has obligated funds in good faith and in accordance with the grant, contract, or other agreement for the execution of an authorized Federal program. A copy of the letter of credit is also given to the U.S. Treasury, authorizing the U.S. Treasury to make payments to the State upon demand from operating accounts maintained by the U.S. Treasury at the Federal Reserve Bank, subject to dollar limits indicated on the letter of credit.

The State issues checks or warrants for program purposes against its operating account. The checks or warrants are processed according to normal banking procedures. Using historical warrant/check clearance patterns, the State requests its commercial bank, as often as daily, to initiate a request for funds to cover the checks or warrants it expects will be presented for payment the next business day.

The bank sends a message by wire to Treasury indicating the name of the State, the amount requested, and the letter of credit number. The Treasury and the program agency review and verify the request for funds. Within 24 hours of the request, the Treasury wire transfers immediately available funds to the commercial bank for credit to the account of the State.

CHECKS ISSUED LETTER OF CREDIT SYSTEM WITH INTEREST PAID OR CREDITED (SEPARATE BANK ACCOUNT)

DESCRIPTION

State is provided a letter of credit which is irrevocable to the extent the State has obligated funds in good faith and in accordance with the grant, contract, or other agreement for the execution of an authorized Federal program. A copy of the letter of credit is also given to the U.S. Treasury, authorizing the U.S. Treasury to make payments to the State upon demand from operating accounts maintained by the U.S. Treasury at the Federal Reserve Bank, subject to dollar limits indicated on the letter of credit.

The State instructs its bank, as often as daily, to initiate a request for funds immediately preceding the issuance of warrants or checks for program purposes. The bank sends a message by wire to Treasury stating the name of the State, the amount requested, and the letter of credit number. The Treasury and the program agency review and verify the request for funds. Within 24 hours of the request, the Treasury wire transfers immediately available funds to the commercial bank for credit to the account designated by the State. Interest is credited to the Federal Government by the bank monthly on the average daily balance in the account at the Federal funds rate.

When Federal/State matching funds are involved, there are a number of options available for consideration:

1. State may issue checks/warrants directly against the separate account for only the Federal share of program costs.

2. State may issue checks/warrants directly against the separate account for both the Federal and State shares, provided that the State transfers the State share to the separate account on the same day the checks/warrants are presented to the account for payment.

3. State may issue checks/warrants against its own account for both the Federal and State shares and transfer the Federal share to the State account on the same day the checks/warrants are presented to the account for payment.

4. State may issue checks/warrants against either the State or Federal account up to that percentage of the total value of warrants which corresponds to the State or Federal matching percentage share for a program. For example, if a State issued a total of $300 in warrants for a program in which the Federal Government paid 90% of the costs with the State matching 10%, the State could then issue warrants totaling $270 against the Federal account and $30 against the State account.

CHECKS ISSUED LETTER OF CREDIT WITH INTEREST PAID OR CREDITED (DAY OF DISBURSEMENT) (BY STATE)

DESCRIPTION

The State would be provided a letter of credit which is irrevocable to the extent that the State has obligated funds in good faith and in accordance with the grant, contract, or other agreement for the execution of an authorized Federal program. A copy of the letter of credit is also given to the U.S. Treasury, authorizing the U.S. Treasury to make payments to the State upon demand from operating accounts maintained by the U.S. Treasury at the Federal Reserve Bank, subject to dollar limits indicated on the letter of credit.

On the day of disbursement, rather than either before or after the fact, the State would request the transfer of funds into any bank/State treasury account it might designate. The day of disbursement is defined as the day that is as close as possible to the time needed by the State for the issuance of warrants, checks, or payments by other means.

Under the "day of disbursement - by State" method, the State would pay or credit the U.S. Treasury with interest on Federal funds held in the State bank/State treasury accounts for a negotiated average number of days, representing the average number of days from the day funds were received in the State's bank/State treasury account until the day that cash was required to redeem the State's warrant, check, or payment by other means.

Interest would be calculated annually, based on the total value of Federal funds during the State's entire fiscal year, multiplied by the above predetermined and negotiated average number of days that the cash was held, times a predetermined and agreed-upon interest rate, less a reasonable administrative charge. The number of days used would, in part, be calculated using a predetermined and agreed-upon check clearance pattern and would assume that specific percentages of disbursements cleared the bank each day subsequent to the issuance of warrants, checks, or payments by other means.

Under the "day of disbursement - by State" method, the comparable interest costs to the State on Federally sponsored programs, where State funds must be disbursed prior to the receipt of Federal funds or where the Federal Government administers a joint Federal/State program, would be calculated and netted against any interest amounts owed to the Federal Government. The net interest due to or owed by the Federal Government would be transmitted or billed to them on a predetermined frequency, preferably annually, after the close of the State's fiscal year.

It should be noted that the desirability of this method stems from the facts that: (a) check clearance patterns are determined on a basis that has already been determined to be acceptable by the Federal Government; (b) one set of check clearance patterns may be developed for the entire State, thereby enabling existing systems and procedures to continue; (c) interest rates would be obtained from some readily available published source, and therefore should result in a non-complex methodology for their application; and (d) Federal and State Government activity would be subject to audit by both State and Federal auditors and could include sanctions to encourage compliance.

Since the objective of considering various Federal/State cash management alternatives is to achieve equity with regard to the use of Federal and State funds, all predetermined items, including check clearance patterns and interest rates, would be subject to annual renegotiation. These items, together with the State's actual performance in drawing down Federal funds or the Federal Government's performance in remitting payments after State funds have been expended or its performance in expending State funds which the Federal Government administers, would be subject to periodic audit and compliance testing.

A MEMORANDUM OF UNDERSTANDING

Regarding Proposed Amendments to the

Intergovernmental Cooperation Act

and

Supporting Administrative Regulations That Will,

in Combination, Create Appropriate Equity

in the

Transfer of Funds Between the

Federal Government and the States

Entered into By The Members of

The State/Federal Cash Management Reform Task Force

in Washington, D.C.

on November 1, 1985

A MEMORANDUM OF UNDERSTANDING

Regarding Proposed Amendments to the
Intergovernmental Cooperation Act
and
Supporting Administrative Regulations That Will,
in Combination, Create Appropriate Equity
in the
Transfer of Funds Between the
Federal Government and the States

Entered into By The Members of
The State/Federal Cash Management Reform Task Force
in Washington, D.C.
on November 1, 1985

The members of the State/Federal Cash Management Reform Task Force, meeting in Washington, DC on November 1, 1985, wish to formally establish their joint and mutual agreement as to the manner in which the Intergovernmental Cooperation Act and supporting administrative regulations may best be amended and established to bring about appropriate equity in the transfer of funds between the Federal Government and the States. This agreement is represented by and presented in the following documents, dated November 1, 1985, that are an integral part of this Memorandum of Understanding.

1. Amendments to Title 31, U.S.C. - the "Intergovernmental Financing Act of 1986," an act to amend the Intergovernmental Cooperation Act by improving the method of disbursing Federal grant money, and for other purposes.

2. Amendments to 31 CFR Part 205, Department of the Treasury Fiscal Service Regulations, regarding payments between the Federal Government and recipient organizations.

3. A revised draft of Circular A-102 "uniform requirements for grants to States and local governments," which contains sections directly concerning cash management practices between the Federal Government and the States and sections addressing the management and awarding of grant funds.

Further, this agreement is additionally represented by proposed sections of the Treasury Financial Manual that concern cash management practices between the Federal Government and the States and other requirements necessary to support the implementa-

tion of the proposed Intergovernmental Financing Act of 1986. These proposed sections of the Treasury Financial Manual will be available at a later date following further review by the Task Force.

In arriving at the terms of this Memorandum of Understanding, the members of the Task Force had hoped to be able to include a requirement that all Federal program agencies embrace the concept of making annual grant awards, which the States believe would mitigate against undue delays in funding that are occasionally associated with quarterly grant award procedures. The Task Force was unable to complete testing of such annual awards procedures, and, not wanting to delay further the issuance of this MOU, chose to postpone a recommendation concerning the establishment of a specific requirement for annual grant awards, at this time. The Task Force looks, however, with much interest on the current efforts of the Department of Health and Human Services, in cooperation with the Office of Management and Budget, in planning for and scheduling to begin in the near future pilot tests of annual grant procedures in several States.

In entering into this Memorandum of Understanding, the State/Federal Cash Management Reform Task Force brings to completion, in all essential aspects, the second phase of its work. This second phase involved the completion of pilot testing called for in the Memorandum of Understanding of the Task Force, dated June 1983, and the development and issuance of proposed implementing legislation and regulations. Further, in entering into this Memorandum of Understanding, the members of the Task Force wish to express their continued confidence in the policies and principles set forth in the June 1983 Memorandum of Understanding and to provide their reasonable assurance that these policies and principles have been tested in substantial measure in the field and have been found to be effective and operative in ensuring appropriate equity in the transfer of funds between the Federal Government and the States. Most especially, the members of the Task Force have concluded that the attached proposed legislation and supporting regulations, and the sections of the Treasury Financial Manual, noted above, together constitute the following:

1. A set of government-wide cash management policies and practices that can govern exchanges of funds between the Federal and State Governments, and

2. Intergovernmental cash management practices which assume that neither the Federal nor State Government benefit financially or suffer financially as a result of the transfer of cash in support of Federal assistance programs.

In arriving at this Memorandum of Understanding of November 1, 1985, the members of the State/Federal Cash Management Reform Task Force are confident that their efforts, since entering into the June 1983 MOU, have been constant, diligent, rigorous, professional in approach, and objective in their setting. Further, the members of the Task Force believe that the contents of the attached proposed legislation and supporting administrative regulations represent the clear attainment of a substantive and very reasonable level of consensus among all members of the Task Force and represent a fairly derived accommodation of the various views and positions of individual members of the Task Force.

The members of the State/Federal Cash Management Reform Task Force earnestly hope that the Administration, the Congress, the States, and other interested parties will find use in and benefit from this Memorandum of Understanding of November 1, 1985, entered into by:

Edward J. Mazur, Co-Chairman
Comptroller
State of Virginia

John J. Lordan, Co-Chairman
Deputy Associate Director,
Financial Management
Office of Management and Budget

Bill Gunter
State Treasurer
Florida

David V. Dukes
Executive Director
Joint Financial Management
Improvement Project

Lewis E. Harris
Assistant Commissioner
for Administration
Tennessee Department of
Human Services

William M. Henderson, Director 11/14/85
Resource Management Division
Office of Comptroller
Environmental Protection Agency

Julian L. Ridlen
Treasurer of State
Indiana

Henry G. Kirschenmann, Jr.
Deputy Assistant Secretary
Procurement, Assistance and
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F. Arnold Schuler 1-7-86
Deputy State Controller
California

John W. Merck
Deputy Associate Director
Planning and Communications
Management
OMB

Richard B. Standiford 11/8/85
Director, Division of
Budget and Accounting
New Jersey

Russell D. Morris 11/1/85
Assistant Commissioner
Federal Finance
Financial Management Services
Department of the Treasury

To amend Title 31, United States Code, to improve the method of disbursing Federal grant money, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the Intergovernmental Financing Act of 1986.

Section 2. Purpose. The purposes of this Act are to:

(a) Establish general guidelines within which the Secretary of the Treasury will develop regulations concerning all transfers of funds between the Federal Government and the States, consistent with the Memorandum of Understanding agreed to by the Joint State/Federal Cash Management Reform Task Force in 1983.

(b) Assure that the States and the Federal Government accord each other the same equitable treatment with regard to the timing and manner of transfers and the management of funds.

(c) Establish general guidelines within which the Executive Departments and Agencies, in cooperation with the States, will develop regulations concerning the timely awarding of grants to the states.

Section 3. Section 6501 of Title 31, United States Code, is amended by renumbering Subsections (7), (8), and (9) as (8), (9), and (10), respectively, and by adding the following new subsection:

(7) "Secretary" means the Secretary of the Treasury.

Subsection (8) is amended to read as follows:

(8) "State" means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State but does not mean a local government of a State.

Section 4. Section 6503 of Title 31, United States Code, is amended to read as follows:

(a) Consistent with program purposes, and regulations of the Secretary, and by means mutually agreed upon by the Secretary and the State, the head of an executive agency carrying out a program shall schedule the transfer of funds to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a State.

(b) Consistent with program purposes and regulations of the Secretary and by means mutually agreed upon by the Secretary and the State, a State shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes.

(c) The Secretary is authorized to issue regulations that would require a State to pay interest on funds from the time they are deposited to the

State's account until the time that they are paid out in order to redeem checks or warrants, or make payments by other means for program purposes. Such interest shall be at the rate specified from time to time by the Secretary pursuant to 31 U.S.C. 323 relating to Treasury tax and loan accounts.

(d) If a State disburses its own funds for program purposes in accordance with Federal law, regulation, or Federal-State agreement, the State shall be entitled to interest at the rate specified pursuant to 31 U.S.C. 323 from the time the State's funds are paid out to redeem checks or warrants, or make payments by other means until the Federal funds are deposited to the State's bank account. Such interest shall be paid out of the Intergovernmental Interest Fund established by Section 6509(a) of this title.

(e) If a State collects and holds refunds of grant funds, such refunds shall be distributed to the Federal Government on a timely basis or used to offset related Federal program funds owed to the State. Further, interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this Act.

(f) In cases where the Federal Government makes payment on behalf of a recipient organization, the principles of this Act apply.

(g) A State may not be required by a law or regulation of the United States to deposit grant money received by it in a separate bank account. However, a State shall account for grant money made available to the State as United States Government grant money in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate Federal executive agency on the status and the application of the money, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the grant received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing, as prescribed in the Single Audit Act of 1984.

(h) The Secretary shall prescribe the methods of payment of interest between the Federal Government and the States, including provisions for offsetting amounts owed by the respective parties. These methods of payment shall provide for comparable treatment in the manner, technique and timing for both the States and the Federal Government.

(i) Periodically, the various Inspectors General will conduct audits, and the Comptroller General of the United States shall perform oversight evaluations. Periodic audits by the States will be conducted within the scope of work performed under the Single Audit Act.

(j) Consistent with Federal program purposes and regulations of the Director of the Office of Management and Budget, the head of a Federal executive agency carrying out a program shall execute grant awards on a timely basis to assure the availability of funds to accomplish transfers in compliance with Section 6503(a).

(k) In assessing charges to be paid by a State into the Intergovernmental Interest Fund, the Secretary shall consider costs incurred by the State in determining the amount due.

Section 5. The analysis of item 6503 of Chapter 65 of Title 31, United States Code, is amended to read as follows:

"6503. Intergovernmental Financing."

Section 6. (a) Chapter 65 of Title 31, United States Code, is amended by adding at the end thereof the following new section:

"6509. Intergovernmental Interest Fund."

(a) There is established in the Treasury of the United States a fund known as the Intergovernmental Interest Fund (hereinafter, "The Fund").

(b) The Fund shall include amounts received as payment of interest under Section 6503(c) of this title, and such sums as may be necessary to pay interest pursuant to Section 6503(d).

(c) Monies in the Fund shall be available without fiscal year limitation.

(d) The Secretary is authorized to credit such portions of the Fund as are in excess of the amount necessary to pay claims to a Treasury miscellaneous receipts account or other accounts established by the Secretary.

(e) Where interest is earned by a State on a program where only the Secretary of the Treasury is authorized to invest funds, the interest earned shall be credited to the appropriate trust fund, not to the Intergovernmental Interest Fund.

Section 7. The analysis of Chapter 65 of Title 31, United States Code, is amended by adding at the end thereof the following:

"6509. Intergovernmental Interest Fund "

Section 8. The provisions of this Act shall apply to all Federal programs and shall supercede the provisions of existing Federal laws or regulations.

Section 9. This Act is effective upon enactment. All States and Federal agencies shall be in compliance with this Act two years subsequent to the date of enactment.

November 1, 1985

DEPARTMENT OF THE TREASURY
FISCAL SERVICE

31 CFR PART 205

PAYMENTS BETWEEN THE FEDERAL GOVERNMENT AND RECIPIENT ORGANIZATIONS

AGENCY: Financial Management Service, Fiscal Service, Treasury

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Fiscal Service is issuing this Notice of Proposed Rulemaking (NPRM) to implement a new funding option for Federal programs and to require payment of interest during the time Federal funds reside in a bank account.

This new "Checks Issued-Interest Remitted" technique is developed in response to statutes in some states that require that the funds reside in a state bank account prior to the issuance of payments.

This part also provides for the remittance of interest by the Federal Government to the States for the time that a state's funds are advanced for Federal programs in accordance with Federal law, regulation or Federal/State agreement. Certain provisions concerning the disallowance of costs are also included.

DATE: Comments on this proposed rule must be received in writing no later than _____.

ADDRESS: Send written comments to: Director, Funds Flow Division, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, Room 802-PB, Washington, DC 20226.

CONTACT: For further information contact:

SUPPLEMENTARY INFORMATION:

Due to concerns lodged by the States regarding the delay of drawdown technique, which delays the drawdown of Federal funds until checks are estimated to clear, a Joint State/Federal Cash Management Reform Task Force, made up of State and Federal representatives, was established in 1983 to consider other cash management alternatives.

The Task Force developed a Memorandum of Understanding (MOU) that was agreed to in 1983. The MOU includes the following seventeen intergovernmental cash management policies:

1. There shall be a set of Government-wide cash management policies and practices that govern all exchanges of funds between Federal and State Governments.

2. Intergovernmental cash management practices should be such that neither the Federal nor State Government benefit financially or suffer financially as a result of the transfer of cash in support of Federal assistance programs.

3. It is understood that the Federal Government is entitled to earnings on cash provided by the Federal Government to a State government prior to the time such cash is needed to redeem a warrant, a check, or payment by other means. It is also understood that a State government is entitled to earnings on cash advanced by such State government to redeem a warrant, a check, or payment by other means, prior to reimbursement by the Federal Government on programs for which Federal payment is required.

4. The Federal Government shall make grant allocations and awards in such a manner and in such amounts to assure that funds are adequate to meet State cash disbursement issuance requirements.

5. States shall bill based on actual cash disbursement needs or a close approximation of expected cash disbursement needs (plus the allowance for depreciation, amortization, and overhead costs, as approved in accordance with OMB Circular A-87).

6. Due to the variety of constitutional, statutory, and administrative restrictions existing among the 50 states, several techniques for transferring cash between Federal agencies and State governments shall be made available for selection by each state. These techniques are:

   a. Checks paid letter of credit.

   b. Estimated checks cleared letter of credit (Delay of Draw).

   c. Checks issued letter of credit with interest paid or credited (using, for example, the Separate Bank Account or Day of Disbursement method).

7. States selecting the checks issued letter of credit with interest paid or credited option shall:

   - Draw down Federal funds as close as possible to the time of issuance of warrants, checks, or payments by other means.

   - Pay or credit the U.S. Treasury interest paid on the balance of Federal cash in banks/State treasuries based on the Federal funds rate; the specific rate and method to be determined.

8. Since the checks issued letter of credit with interest paid or credited option is new, there should first be a pilot test in three or four States in order to resolve any initial procedural or operational matters that may arise.

9. The Federal Government is willing to work with the States and state organizations to consider other financing systems or methods proposed by the States as long-range or future alternatives.

10. The Federal Government shall pay to or credit the appropriate State Treasury interest on the balance of state cash advanced on Federal programs based on the Federal funds rate; the specific method and rate to be determined.

11. Whenever feasible, each state and the concerned Federal agencies shall implement a single cash management technique for all Federal programs in which the State is participating.

12. Federal agencies and each State government will move as quickly as possible to adopt the technique(s) chosen by each state.

13. All transfers of funds between the States and the Federal Government shall be accomplished by wire transfer to ensure quick delivery of funds.

14. Where Federal statutes require reimbursement, the Federal Government shall revise regulations or administrative procedures to ensure that cash is transferred as closely as possible to the time that states make disbursements.

15. States will apply sound businesslike practices when disbursing Federal funds to secondary recipients and contractors, and not disburse or handle such cash at a faster rate or in a different manner than it handles its own cash.

16. For Supplemental Security Income State supplement payments, the same cash management principles shall be followed, except the State will be considered the disbursing agent and the Federal Government the payee.

17. Each State will designate a specific State official(s) (name and title) with the statutory or administrative authority to coordinate all state agencies to review, approve, and/or enter into an agreement with the U.S. Government for the purpose of implementing these cash management policies.

The MOU also contained an agreement to pilot in several States a new funding technique called "Checks issued-interest remitted". This technique allows states to time the draw of Federal funds to satisfy the requirements of the constitution or statutes of some states that funds be on deposit prior to the preparation of a check, warrant, or other payment.

In order to maintain equity in intergovernmental cash management, the Federal Government will pay interest when a State disburses its own funds for program purposes because Federal funds arrive subsequent to the State's need to redeem checks or warrants, or make payments by other means.

It is intended that the regulations will apply to all recipients. However, at this time the Federal Government will implement the provisions of this regulation that apply to the payment and collection of interest with state recipients only. Nothing in this regulation precludes the collection of interest from non-state recipient organizations due the Federal Government under any other regulations or statutes.

SPECIAL ANALYSIS:

The Financial Management Service has determined that this proposal is not a major rule for purposes of E.O.12291. Therefore, no regulatory impact analysis is required.

It has been certified that the rulemaking proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 205

Banks, Banking.

Fiscal Assistant Secretary

Date

For the reasons set out in the preamble, it is proposed to add a new Part 205 to 31 CFR, Chapter II, to read as follows:

Part 205 - Payments Between the Federal Government and Recipient Organizations

Accordingly, 31 CFR Part 205 is amended as follows:

Section

Authority: 5 U.S.C. 301; Sec. 203, 82 STAT. 1101 (42 U.S.C. 4213).

§ 205.1 Purpose

This part prescribes the regulations governing monetary transactions between the Federal Government and recipient organizations for financing operations under all Federal programs.

§ 205.2 Scope of regulations

(a) The regulations in this part apply to all exchanges of funds between the Federal Government and all recipient organizations carrying out Federal programs whether by grant or other forms of assistance agreements.

(b) Payments on contracts are subject to the provisions of the Federal Acquisition Regulations regarding contract financing which appear at 48 CFR 1 and the provisions of the Armed Forces Procurement Regulations regarding defense contracting which appear at 32 CFR 163.

§ 205.3 Definitions

For the purpose of this Part:

(a) Recipient organization means an organization outside the Federal Government (including any state and local government, educational institution, international organization, any other public and private organization or fiscal agent or institution acting on its behalf) receiving payments under any Federal program.

(b) Primary recipient organization means a recipient organization receiving payments directly from the Federal Government and any organization, such as a fiscal agent, acting on its behalf.

(c) Secondary recipient organization means a recipient organization receiving payments from a primary recipient organization.

(d) State means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State but does not mean a local government of a State.

(e) Check means a draft, warrant, or payment by other means.

(f) Monetary transactions shall include all program payments and interest payments.

(g) Direct Treasury check means the method whereby payment is made directly to a recipient organization by Treasury check authorized by the responsible officer of the Federal program agency.

(h) In accordance with Federal law, regulations or Federal/State agreement means a recipient makes a payment under an ongoing Federal program notwithstanding the absence of a Federal appropriation.

(i) Letter of credit means a commitment, certified by an authorized official of a Federal program agency, specifying a dollar limit available to a designated payee. A period of time of availability may also be specified.

(j) Drawdown means the process of requesting and receiving Federal funds.

(k) Checks paid technique means the procedure whereby the drawdown is delayed until the checks issued for program disbursements are presented to the recipient organization's bank for payment.

(l) Delay of drawdown technique means the procedures where by the drawdown is spread out over a number of days so that daily deposits will roughly coincide with the pattern in which checks have historically been presented to the bank for payment.

(m) Checks issued-interest remitted technique means the method of drawing down funds such that Federal cash is on hand as close as possible to the day the cash is needed by the recipient for the issuance of warrants, checks, or payments by other means. Interest is remitted as provided by Sections 205.4 (e) and 205.4 (f).

(n) Interest means the interest to be charged at the rate specified from time to time by the Secretary pursuant to 31 USC 323 relating to Treasury tax and loan accounts.

§ 205.4 General regulations

(a) Payments to a recipient organization shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the program or project. The timing and amount of payments shall be in accordance with the funding technique elected by the recipient organization. Recipients shall use either the checks paid, delay of drawdown, checks issued-interest remitted, or other Treasury approved technique in timing the drawdown of Federal funds.

(b) If a Federal program agency has, or expects to have, a continuing relationship with a recipient organization for at least one year, involving annual payments aggregating at least $120,000, the Federal program agency shall use the letter-of-credit method or a Treasury approved transfer method.

(c) When annual payments to a recipient organization aggregate less than $120,000 or there is not a continuing relationship for at least one year, the payments shall be made by the direct Treasury check method or a Treasury approved transfer method.

(d) Payments made by primary recipient organizations to secondary recipient organizations shall conform substantially to the same standards of timing and amount as apply to payments by Federal program agencies to primary recipient organizations. No interest obligation pertaining to the Federal Government shall be computed or paid on balances held by secondary recipients.

(e) Unless prohibited by Federal statute, State recipients shall be required to remit interest for the time Federal funds are on hand prior to being used to redeem checks or warrants, or make payments by other means for program purposes. Where used, compliance with delay of drawdown procedures will preclude payment of interest to the Treasury.

(f) When authorized by Federal statute, the Federal Government shall remit interest when the State uses its funds prior to the receipt of Federal funds to redeem checks or warrants, or make payments by other means in accordance with Federal law, regulation or Federal/State agreement.

(g) In cases where the Federal Government makes payment on behalf of a recipient organization, for example, the Supplemental Security Income program, the principles of this regulation apply. The State's remittance is to be timed to coincide with the clearance time of Federal checks or payments by other means.

(h) When a State collects and holds refunds of Federal grant funds such amounts shall be remitted to the Federal Government on a timely basis or offset against related Federal program funds. Interest if applicable on such funds shall be calculated from the first day of the month subsequent to the month in which the State collected the funds.

§ 205.5 Responsibilities of Federal program agencies

The responsibilities of Federal program agencies are:

(a) Amend or establish procedures to fund approved Federal programs and projects under methods agreed to by the Federal agency and the recipient.

(b) Promulgate internal policy designed to schedule the transfer of funds to minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a recipient organization.

(c) Make grant allocations and awards for program purposes in such a manner and amounts to assure that Federal funds can be drawn timely to meet primary recipient cash requirements in carrying out Federal programs.

(d) Expedite the processing of supplemental awards and the resolution of disallowances and deferrals so as to minimize the cash flow burden on recipients and the payment of Federal interest to the States.

§ 205.6 Responsibilities of recipient organizations

The responsibilities of a recipient organization are:

(a) Draw only immediate cash requirements under mutually agreed methods for carrying out approved programs or projects.

(b) Apply sound businesslike practices when disbursing Federal funds to secondary recipients and contractors, and not disburse or handle such cash at a faster rate or in a different manner than it handles its own cash.

(c) Maintain appropriate documentation to support cash management practices.

(d) Promulgate internal policies to ensure compliance with these regulations.

§ 205.7 Compliance

(a) The Single Audit Procedures of OMB Circular A-128 shall be used to assure compliance with the provisions of this Part.

(b) To ensure compliance by Executive Agencies, the various Inspectors General are encouraged to conduct audits and the Comptroller General is encouraged to perform periodic oversight evaluations.

(c) When no Treasury approved funding technique has been selected by a recipient, such recipients may be assessed estimated interest where authorized by law for the time Federal funds are on hand prior to being used to redeem checks or warrants, or make payments by any other means for program purposes.

§ 205.8 Administrative costs

(a) Unless prohibited by Federal statute, the primary recipient shall be reimbursed for the administrative costs of procedures used to implement and maintain the elected technique through indirect cost in accordance with applicable cost principles.

(b) As an option to the above procedure where authorized by law, Treasury will allow States to submit properly documented and reasonable costs of procedures used to implement and maintain the selected technique as offsets to interest owed to the Intergovernmental Interest Fund.

§ 205.9 Implementing instructions

The Commissioner, Financial Management Service, will issue implementing instructions in Volume I of the Treasury Financial Manual for the regulations established by this Part.

DRAFT

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OMB Circular A-102

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

1. Purpose. This circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally recognized Indian tribal governments.

2. Authority. This circular is issued under authority of the Budget and Accounting Act of 1921, as amended, the Budget and Accounting Procedures Act of 1950, as amended, and Reorganization Plan No. 2 of 1970 and Executive Order No. 11541. Also included in the circular are standards to ensure consistent implementation of Sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and the Federal Grant and Cooperative Agreement Act of 1977.

3. Background. This revision builds upon agency experience in implementing the original Circular A-102. It updates certain provisions, provides further standard guidance to Federal agencies, and establishes common regulatory terms and conditions. The revised circular will replace a number of varying requirements now found in agency regulations and in handbooks and manuals on the same subject.

4. Coverage. All Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments shall follow the policies in this circular and issue common regulation grants administration regulations (common regulation). If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in the circular, the provisions of the enabling legislation shall govern.

5. Exceptions. The Office of Management and Budget may grant exceptions from the requirements of this circular when permissible under existing law. However, in the interest of uniformity and consistency, exceptions will be permitted only in exceptional circumstances.

6. Pre-Award Policies.

a. Use of grants or cooperative agreements. The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301) governs the use of grants, contracts and cooperative agreements. A grant or cooperative agreement will be used only when the principal purpose of a transaction is to accomplish a public purpose of

support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is anticipated between the executive agency and the recipient during performance of the contemplated activity."

b. Advance Public Notice and Priority Setting.

(1) Federal agencies shall provide the public with an advance notice in the Federal Register, or by other appropriate means, of intended funding priorities for discretionary assistance programs. These priorities shall be approved by the head of the department or agency.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards shall be reviewed for consistency with agency priorities by a policy level official.

c. Standard Forms for Applying for Federal Assistance

(1) Agencies shall use the forms prescribed in section __.10 of the common regulation for all programs except for those that require no application.

(a) Preapplication for Federal Assistance. The Preapplication for Federal Assistance is used to: (1) establish communication between the agency and the applicant, (2) determine the applicant's eligibility, (3) determine how well the project can compete with similar applications from others, and (4) eliminate any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications. Preapplication forms shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000. It may be used for other programs, if desired. In addition, agencies may establish procedures allowing state and local government applicants to submit a preapplication if they so desire, when there are no mandatory requirements for preapplication

(b) Application for Federal Assistance (Nonconstruction Programs). The Application for Federal Assistance (Nonconstruction Programs) form shall be used for all programs, except those where the major purpose is construction, land acquisition, or land development or where the application is for a single-purpose and one-time award of less than $10,000 that does not require an environmental impact statement, or the relocation of persons, businesses, or farms.

(c) Application for Federal Assistance (Construction Programs). The Application for Federal Assistance (Construction Programs) form will be used for all grants where the major purpose of the program involves construction, land acquisition, or land development.

(2) Requests by grantees for changes, continuations, and supplements to approved grants will be submitted on the same form as the original application. For these purposes, only the amended pages of the forms will be required.

(3) Agencies may specify how and whether budgets should be separately shown by functions or activities within the program or project.

(4) When additional information is needed to comply with legislative requirements or to meet specific program needs, Federal agencies shall obtain OMB clearance in accordance with the Paperwork Reduction Act clearance requirements of 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public."

(5) Additional assurances shall not be added to those contained in the forms unless specifically required by law.

(6) Agencies have the option of shading out any line item on any form that is unnecessary for decisionmaking purposes or for meeting the requirements of other circulars or laws except for the Standard Form 424 facesheet. This form shall not be modified. If an item is not applicable, write or overprint "NA" in the space provided for each item.

(7) Federal grantor agencies are authorized to reproduce these forms. The Standard Form 424 can be obtained from the General Services Administration.

d. Debarment and Suspension. Federal agencies shall not award assistance to applicants that are debarred or suspended, or are otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 00000. Agencies shall establish procedures for the effective use of the Consolidated List of Debarred, Suspended, Voluntarily Excluded and Ineligible Assistance Participants to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide access to the list to their recipients and subrecipients (including contractors) at any tier, to assure that they do not make awards in violation of the Executive Order.

e. Adjustments to Awards.

(1) Agencies should make awards on an annual basis, unless awards for other periods are dictated by progrm requirements or funding limitations. Ordinarily awards should be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify recipients immediately of any anticipated adjustments in program funding levels. This notice shall be provided as early as possible in the funding period, and before recipient funds have been expended. Reductions in funding shall apply only to periods after notice is provided.

Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

(3) When a multi-year project is funded in increments, agencies shall deobligate any amount in excess of $2,500 that has not yet been obligated by the grantee when making an award for the next period.

f. Special Conditions or Restrictions. Agencies may impose special conditions or restrictions on awards of Federal financial assistance to "high risk" applicants/recipients in accordance with section __.12 of the common regulation.

g. Waiver of "Single" State Agency Requirements.

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 shall be given expeditious handling and, whenever possible, an affirmative response shall be made to such requests.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204, the Federal grantor agency handling such a request shall advise the Office of Management and Budget prior to informing the State that the request cannot be granted. The agency will indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing "single" State agency requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

h. Patent Rights. Agencies shall use the standard patent rights clause when supporting research and development in accordance with OMB Circular A-124.

7. Post-award Policies.

a. Cash Management. Methods and procedures for transferring funds shall minimize the time elapsing between the transfer and the recipient's need for the funds.

(1) Such transfers shall be made consistent with program purposes, the Intergovernmental Financing Act, and Treasury regulations.

(2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b. Recipient Financial Management Systems.

(1) In making its assessment of the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information such as previous audit reports to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

(2) The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient will not be required to convert its accounting system to the accrual basis but instead may develop the accrual information through an analysis of the documentation on hand.

c. Program Income

(1) Agencies should encourage recipients to generate program income to help defray program costs. However, recipients shall not use grant-acquired equipment or services to compete unfairly with the private sector.

(2) Program income shall be deducted from total program costs as specified in the common regulation at __.25(g)(1) unless agency regulations state otherwise. Authorization for recipients to follow the other alternatives in __.25(g)(2) and (3) shall be granted sparingly.

d. Site Visits and Technical Assistance. Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only in response to requests from recipients.

8. After-the-Grant Policies.

a. Closeout.

Federal agencies shall notify a recipient in writing before the end of the award of reports that will be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification.

b. Annual Reconciliation of Continuing Assistance Awards.

Federal agencies shall reconcile continuing awards annually and evaluate program performance and financial reports. Items to be reviewed include:

(1) A comparison of the recipient's annual work plan to its progress reports and project outputs,

(2) The Financial Status Report (SF 269),

(3) Request(s) for payment,

(4) Compliance with any matching, level of effort or maintenance of effort requirement, and

(5) A review of federally owned property for which the recipient is accountable.

Federal agencies shall close out a continuing agreement only after the end of the last funded continuation agreement.

9. Entitlements (Reserved)

Note: Clarifying Procedures Relating to Disputed Claims, Deferrals and Disallowances - It is recommended that the Circular and Common Rulemaking include specific language that will give states an option to accept or reject a reduction in future funding due to a disputed claim, deferral or disallowance, except where the Federal Code expressly requires that such a reduction be made. Further, that if the disputed claim, deferral or disallowance is upheld upon review, the state is then obligated to return the funds and to pay interest for the period for which the funds were held.

10. Policy Review (Sunset). The circular will have a policy review (three years from date signed).

11. Effective Date. The circular is effective (60 days from date signed).

12. Inquiries. Further information concerning this circular may be obtained from:

Financial Management Division
New Executive Office Building, Room 10215
Office of Management and Budget
Washington, D.C. 20503

Telephone: (202) 395-3050

Director

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